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House of Commons
Joint Committee on Human Rights

The Use of Restraint in Secure Training Centres

Eleventh Report of Session 2007–08

Report, together with formal minutes, and oral and written evidence

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Bill Sinton (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Committee Specialists), Jackie Recardo (Committee Assistant), Karen Barrett (Committee Secretary) and Jacqueline Baker (Senior Office Clerk).

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Summary

Human rights apply equally to people in detention. Detained children and young people are especially vulnerable. British law and practice call into question the Government’s commitment to recognising the dignity and worth of children in detention. The Committee has previously drawn attention to physical assault on and restraint of children in detention which it saw as unacceptable contraventions of the UN Convention on the Rights of the Child (paragraphs 1-4).

The Secure Training Centre (Amendment) Rules, which amended the Secure Training Centre Rules 1998, came into force in July 2007, without parliamentary debate. They amend the existing Rules to permit Secure Training Centres (STCs) to use force against detained children and young people to “ensure good order and discipline”. The Amendment Rules were criticised for widening the scope for restraint in STCs. The Government promised a review of restraint in juvenile settings. In a judicial review of the Amendment Rules, the High Court held that they represented a “significant change in policy”. In this Report the Committee considers their compatibility with the UK’s human rights obligations (paragraphs 5-18).

Restraint allowed in STCs is known as Physical Control in Care (PCC) and comprises a range of restraint holds and so-called “distraction techniques”. The UN Committee on the Rights of the Child has stated that the deliberate infliction of pain should not be used as a form of control. The Minister told the Committee that PCC was “designed to avoid, as far as possible, the use of techniques that involve pain”, stating that “the Government does not sanction violence against children”. The Committee considers that this is the effect of current UK law and that violence against children should be avoided unless absolutely necessary. Statistics suggest that restraint is used on average on ten occasions per child per year. The issue of restraint has arisen in inquests into the deaths of two young people detained in STCs (paragraphs 19-38).

The Minister told us that the Amendment Rules were brought in to clarify the existing legal position and to respond to the comments of the coroner who conducted the inquest into Adam Rickwood’s death. In the Committee’s view, the Amendment Rules have created more confusion and widened the scope for use of force in an unacceptable manner. The Committee recommends new Amendment Rules, following consultation with interested parties and medical advice, to make clear that physical restraint is not permissible for the purposes of good order and discipline. It also recommends careful monitoring of the effect of the Amendment Rules and that the Government regularly reports to Parliament on the number of restraint incidents (paragraphs 39-74).

The Committee welcomes the creation of the Youth Justice Unit, the current review of restraint and the re-establishment of the Medical Review Panel. It welcomes the Government’s suspension of two restraint techniques in December 2007 and recommends abolition of all distraction techniques without delay. It suggests a series of specific measures to ensure compliance by STCs with human rights standards, including amendments to their contracts, monitoring of their local operating instructions, staff training and provision of information on restraint to detained children and their families. It also recommends that the PCC training manual, which should be published in full and disseminated to all staff who
use restraint, be regularly revised to ensure that staff are absolutely clear about when restraint is permitted (paragraphs 75-118).
1 Introduction

1. When the state takes away the liberty of an individual and places him or her in custody, it assumes full responsibility for protecting that person’s human rights. Fundamental amongst these are the right to life, the right not to be subjected to torture, inhuman or degrading treatment or punishment, and the right to bodily integrity. These rights, which apply equally to people in detention, now form part of our law under the Human Rights Act 1998 (“HRA”). The treatment of detained children and young people raises particular concerns, given their heightened vulnerability. The United Nations Convention on the Rights of the Child 1989 (“UNCRC”), ratified by the UK in 1991, emphasizes a recognition of the dignity and worth of children. In the context of detained children and young people, this principle is vital to the rehabilitation of the child and to his or her ability to be an effective citizen when released. However, law and practice in the UK relating to children and young people in detention calls into question the Government’s commitment to that principle.

2. We, and our predecessors, have had a longstanding interest in ensuring that the human rights of children in detention are protected. In their 2004 report on deaths in custody, our predecessors stated:

   Human rights standards and the principle of proportionality require that any form of physical restraint should be a last resort. Staff should therefore be equipped with a range of skills to deal with and de-escalate potentially violent situations, as well as a range of restraint techniques that will allow for use of the minimum level of force possible. Restraint in detention should be a rare event, and should never be used as a matter of routine.2

3. Our predecessors’ Report on the UNCRC considered the position of children in all forms of detention in the UK, and stated:

   The level of physical assault and the degree of physical restraint experienced by children in detention in our view still represent unacceptable contraventions of [the] UNCRC.3

4. The principal human rights standards with which we are concerned in this Report – particularly in relation to the UNCRC – are considered in detail in the Annex to this Report.

Our inquiry

5. On 8 August 2004, 14 year-old Adam Rickwood was found dead in his room in Hassockfield Secure Training Centre, having been restrained with the use of a pain technique earlier that day for refusing to go to his room. He had hanged himself. Adam was the youngest child ever to die in penal custody in England and Wales.4 The coroner

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1 Articles 2, 3 and 8 ECHR.
4 See paras 33-36 of this Report for further details.
who conducted the inquest into his death made a number of recommendations, including that an urgent review of the rules on the use of restraint be undertaken to clarify the relationship between the Criminal Justice and Public Order Act 1994 and the Secure Training Centre Rules 1998. He stated:

It must be seen as essential that there must be no ambiguity in anyone’s mind, young person, staff, management or those in the YJB [Youth Justice Board] or indeed Government as to when the use of restraint or force to maintain good order and discipline or for compliance reasons is authorised.5

6. The Secure Training Centre (Amendment) Rules 20076 (“the Amendment Rules”) were laid before Parliament on 13 June 2007. The Amendment Rules amend the existing Rules to permit secure training centres7 – privately run prisons which detain approximately 300 children and young people – to remove a child from association or restrain him or her to “ensure good order and discipline”.8 This change immediately attracted criticism from expert NGOs (such as Inquest, the NSPCC and the Howard League for Penal Reform), who claimed that this significantly increased the range of circumstances in which restraint – a polite term for force, comprising holds and so-called “distraction” techniques (which involve inflicting pain to thumb, ribs or nose) – could be used in Secure Training Centres (“STCs”). Indeed, the former head of policy for the juvenile secure estate at the Youth Justice Board (“YJB”) described the proposed changes as “utterly deplorable”, warning that the Amended Rules would lead to an increase in the use of restraint as “staff will no longer need to worry if their restrictions can be justified”.9 The Rules came into force on 6 July 2007, without parliamentary debate.10

7. On 25 June 2007, we wrote to the Minister expressing our “surprise and disappointment at the Government’s decision to extend the range of circumstances in which force can be used in secure training centres”. We sought an explanation of how the Amendment Rules are compatible with the European Convention on Human Rights (“ECHR”) and the UNCRC, and specific information on a number of detailed issues.11

8. The Minister replied on 10 July 2007, stating:

We are quite confident that the 2007 Rules accord with both the ECHR and the UN Convention on the Rights of the Child … As with most if not all rights, there is an important balance to be struck between competing rights. It is essential to have proper regard to the rights of other trainees and of members of staff, as well as of the young person being restrained, and to weigh the risks attaching to failure to restrain in situations where restraint is necessary. A secure facility cannot be run safely if aggressive and dangerous behaviour is allowed to go unchecked, or if good order is compromised to the extent that staff lose effective control. The behaviour of young

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5 Letter from Andrew Tweddle, Ev 28, para. 10.
6 2007/1709.
7 See para. 19 of this Report for further details.
8 Rules 36 and 38, as amended.
10 Since coming into force, the Rules have been debated in both Houses of Parliament (HL Deb, 18 July 2007, Col. 281 et seq. and HC Deb, Fourth Delegated Legislation Committee, 28 November 2007).
11 Ev 14-15.
people in custody is frequently challenging and sometimes dangerous. Physical restraint must be available – in the last resort – so that everyone in the secure facility can be kept as safe as possible.  

9. We do not underestimate the challenging task that STC staff face. Difficult situations may often arise in STCs and staff need to have the means at their disposal to ensure that they can keep detainees safe, as well as to protect themselves. However, in the light of our previously expressed views on the extremely vulnerable position of detained children and young people, we had serious concerns about whether the Amendment Rules would lead to more frequent resort to force and fail to provide adequate protection for the rights of children and young people within STCs. We therefore decided to explore this issue further.

10. The Committee issued a call for evidence on 26 July 2007, seeking evidence “on the compatibility of the Rules with international human rights standards and any observations regarding the use of force against children in secure training centres”. We are grateful for the written evidence we received, including from the Ministry of Justice, the YJB, Sally Keeble MP, a number of organisations concerned with protecting children and young people in detention, the Children’s Commissioner and a STC operator. On 10 October 2007, the Committee took oral evidence from David Hanson MP, Minister of State at the Ministry of Justice, and Ellie Roy, Chief Executive of the YJB. Following this evidence session, we entered into further correspondence with the Minister.

Developments

11. During the period of our inquiry, there have been a number of notable and relevant developments in this area.

12. On 12 July 2007, a joint review of restraint issues in juvenile settings was announced by the Ministry of Justice and the Department for Children, Schools and Families. The Review is due to report to Ministers by 4 April 2008. The broad terms of reference of the review are to:

… encompass policy and practice on the use of restraint across a range of juvenile secure settings including Secure Training Centres (STC), Secure Children’s Homes (SCH) and Young Offender Institutions.

13. On 18 July 2007, Lord Carlile of Berriew QC, who chaired the Howard League for Penal Reform’s inquiry into restraint, initiated a debate in the House of Lords seeking the annulment of the Rules. Lord Carlile feared that the effect of the Amendment Rules was:

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12 Ev 15.
14 HC Deb, 22 October 2007, 127W. In a written ministerial statement to the House of Commons on 8 October 2007, the Government announced that Andrew Williamson CBE and Peter Smallridge CBE had been appointed to chair the review. The statement said “the Chairs will be considering whether any further issues should be brought within the broad terms of reference of the review and will decide soon the process for calling the evidence and for consulting with interested parties.”
15 Terms of Reference, 26 July 2007.
16 Howard League for Penal Reform, An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes, January 2006.
… to make the use of physical restraint one of the items on the menu of first choices available in any secure training centre, whenever there is any sign of trouble.\textsuperscript{17}

14. During the debate, the Government defended the Amendment Rules, claiming that they had been introduced because of a lack of clarity in the legal regime, as identified by the coroner who presided over the inquest into Adam Rickwood’s death.\textsuperscript{18} Following the Government’s assurance that an inquiry would be set up, the motion to annul the Rules was withdrawn.\textsuperscript{19} On 28 November 2007, the Rules were debated in a Delegated Legislation Committee in the House of Commons.\textsuperscript{20}

15. On 8 February 2008, the High Court gave judgment in a judicial review challenge to the Amendment Rules holding that the failure to consult the Children’s Commissioner was \textit{Wednesbury} unreasonable and the failure to carry out a race equality impact assessment was in breach of the Secretary of State’s duty. On the Claimant’s arguments that the Rules were in breach of human rights, the Court focussed on two questions: whether the vagueness of the phrase “good order and discipline” renders the Rules too uncertain to provide the required protection against arbitrariness; and whether the Rules, looked at in the abstract, legitimise treatment which would be bound to violate Articles 3 or 8 ECHR. The Court held that the Rules are neither legally uncertain nor do they legitimise treatment which is in breach of Articles 3 or 8, but stated:\textsuperscript{21}

\begin{displayquote}
Whether conduct and/or treatment complained of in a future case is contrary to Articles 3 and/or 8 will depend on all the circumstances.\textsuperscript{22}
\end{displayquote}

Although deciding that the Amendment Rules were “a significant change of policy”,\textsuperscript{23} the Court decided not to quash the Amendment Rules as the Claimant himself was no longer at risk of being detained in a STC and the issue was receiving consideration “in good faith within a reasonable timescale”.\textsuperscript{24}

16. On 2 to 6 December 2007, the Council of Europe Committee for the Prevention of Torture visited the UK to discuss, amongst other topics, the use of restraint on children and young people in detention. The Committee met with the Youth Justice Board and Ministry of Justice.\textsuperscript{25}

17. Later that month, on 18 December 2007, the Minister confirmed that two restraint techniques: the “double basket hold”\textsuperscript{26} and the “nose distraction technique” (the latter of which was used on Adam Rickwood on the day of his death), had been suspended on the basis of medical advice.\textsuperscript{27} The same day, the YJB wrote to all establishments using such

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{17} HL Deb, 18 July 2007, Col. 282.
\item \textsuperscript{18} Ibid, Col. 303.
\item \textsuperscript{19} Ibid, Col. 311.
\item \textsuperscript{20} HC Deb, Fourth Delegated Legislation Committee, 28 November 2007.
\item \textsuperscript{21} \textit{R (on the application of AC) v Secretary of State for Justice} [2008] EWHC 171 (Admin).
\item \textsuperscript{22} Para. 45.
\item \textsuperscript{23} Para. 35.
\item \textsuperscript{24} Para. 51.
\item \textsuperscript{25} CPT Press Release, 12 December 2007.
\item \textsuperscript{26} A description of this restraint hold is not in the public domain, see Chapter 4 of this Report.
\item \textsuperscript{27} Ev 28.
\end{itemize}
\end{footnotesize}
techniques, noting that the Physical Control in Care (“PCC”) medical panel “had identified some potential risks with the double basket hold and had also queried the need to retain the nose distraction technique” and asking STCs to ensure that the two techniques not be used until further notice.  

**Structure**

18. This Report considers the compatibility of the STC Rules 1998 as amended by the STC (Amendment) Rules 2007 with the UK’s human rights obligations. We consider this against the backdrop of broader concerns about the use of restraint within STCs and the adequacy of the existing safeguards. Chapter two sets out the background to STCs and the use of restraint, known as PCC. Chapter three considers the STC (Amendment) Rules in detail. We look at their purpose and effect, including whether they change or merely clarify the law, and in particular whether they meet the concerns of the coroner who conducted the inquest into Adam Rickwood’s death. Chapter four considers the use of restraint more generally and makes recommendations with a view to ensuring that the rights of children and young people in detention are properly protected.

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2 Secure Training Centres and the use of restraint

Secure Training Centres

19. Secure Training Centres (STCs) accommodate young offenders aged 12 to 17 inclusive who are serving certain custodial sentences, and some young people who have been remanded into the care of a local authority with a requirement that they be kept in secure conditions. There are no STCs in Scotland. The centres were originally conceived for children and young people who were too young or vulnerable to be in young offender institutions run by the Prison Service. Four centres are in operation (Medway, Oakhill, Hassockfield and Rainsbrook). All are privately run. Rebound, the company which manages Medway and Rainsbrook Secure Training Centres, provided evidence to our inquiry. In oral evidence, the Chief Executive of the YJB described STCs as “reasonably okay” but “very claustrophobic”.

20. We have been concerned about the regime in STCs since early 2006 when we asked the Minister to supply us with quarterly information on the number of occasions restraint was used and the number of occasions on which the staffing levels fell below the YJB minimum safe level.

21. The Ministry of Justice is responsible for the legislation and Rules under which STCs operate. It also oversees the YJB, a non-Departmental Public Body, which was set up in 1998, and is responsible for:

… commissioning secure accommodation for children and young people sentenced or remanded by the courts. The YJB maintains oversight of contracts and service level agreements (SLAs) for secure accommodation services. The YJB’s only executive function is to operate the placement service for children and young people sentenced or remanded by the courts developed following the establishment of the YJB. Statutory responsibility for approving PCC techniques rests with the Secretary of State, not the YJB.

22. A new Chair of the YJB, Frances Done, was appointed in January 2008, a year after the former Chair, Professor Rod Morgan, left.

Physical Control in Care

23. The type of restraint which may be used in STCs is known as Physical Control in Care. PCC restraint comprises holds and three “distraction” techniques; the latter involves inflicting pain to thumb, ribs or nose. The nose distraction technique, which was suspended by the Ministry of Justice in December 2007, had previously been withdrawn in STCs managed by Rebound following an internal evaluation of its use and

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29 Q 30.
30 Ev 34, para. 1.14.
31 Ev 28.
effectiveness. In its evidence to us, the YJB distinguished between holds, which it described as “non-pain compliant methods” and other methods (i.e. distraction techniques), which “rely on techniques which create pain”.

24. According to the Minister, holds:

… are graded according to the level of resistance the trainee is presenting. Level 1 holds are made by a single custody officer; level 2 by two officers; and level 3 by three officers. The purpose of these holds is to safeguard both the young person being restrained and anyone he or she might injure – notably other young people and members of staff at the centre. In some circumstances, however, it is not possible to apply a hold immediately because, for example, the trainee has seized another young person and refuses to release him or her. Before a hold can be applied, it is first necessary to disengage the trainee and for this three distraction techniques are available.

25. The YJB noted that distraction techniques:

… are designed for use in dangerous or violent situations where a person is at serious risk of injury. Distraction techniques inflict a momentary burst of pain to the nose, rib or thumb to distract a young person who presents a danger to him/herself or others.

26. In oral evidence, the YJB provided us with an example of the use of restraint in practice:

In one of the STCs earlier this year we had an incident where four young people, four boys, linked arms. They were aged about 16 or 17, I think. They refused to go to bed at bedtime. They were not posing any risk to anybody else, they were not threatening to self-harm, but, because they had done that and they just would not move and the staff could not get them to move, they could not induce them to move, they could not incentivise them to move, they were posing a risk to the establishment moving into night state, when all the children are in bed and where they need to have suicide watches and all that sort of stuff. They needed to move forward, so they needed to intervene in that situation because the staff in that situation were required to undertake a risk assessment as to whether they should intervene to bring the situation under control or whether, if they let it run, there would be a risk to other young people. In that situation, other young people were getting quite upset, there was a lot of tension starting to build, so they made a judgment that they needed to intervene to bring the situation under control and that is the type of situation where they would intervene using this. And it is to fulfil their duty of good order and discipline, because the question otherwise is: What can they do in that type of situation?

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32 Ev 52, para. 55.
33 Ev 34, para. 1.11-1.12.
34 Ev 15.
35 Ev 41, para. 1.58.
36 Q 22.
Human rights compatibility of PCC

27. We asked the Minister to explain how the use of painful distraction techniques was compatible with the UK’s human rights obligations to ensure that restraint does “not involve the deliberate infliction of pain as a form of control”, as required by General Comment 8 of the UN Committee on the Rights of the Child, the monitoring body for the UNCRC.37 In reply, he stated:

PCC is designed to avoid, as far as possible, the use of techniques that involve pain. Distraction techniques are for use in situations where the risk involved in not using such a technique outweighs the undesirability of using it. The Government notes the opinion of the UN Committee [...] However, the Government’s obligations under the Convention are determined solely by the requirements of the Convention.38

28. The Minister distinguished the use of force or restraint to prevent harm from the application of violence, which he described as “the unreasonable, unjustified and unlawful use of force”. He noted that the Government has an obligation “to provide for restraint to be used, where the consequence of not using it would be to put people at risk”, concluding that “the Government does not sanction violence against children”.39 We note that in a guide for practitioners, the Scottish Institute for Residential Child Care made it clear that, “pain compliance is not an acceptable practice in child care”.40

29. The state has a duty to ensure that detained young people and STC staff are protected from abuse or violence. It is therefore incumbent on the state to take positive steps to ensure that detainees and staff are not injured by other detainees, and conversely that detainees are not injured by staff.

30. We are dissatisfied by the Minister’s explanation of how current policy and practice comply with human right standards. The Minister appears to be suggesting, first of all, that the state is not required to comply with General Comments of the UN Committee on the Rights of the Child, and simply with the Convention itself. While this may be strictly correct as a matter of international legal obligation, we are very disappointed by the Government’s apparent lack of respect for the interpretations of the UNCRC by the UN Committee in its General Comments.41 We regard these comments as being fundamental to an understanding of the State’s obligations under the UNCRC.

31. The Minister also appears to distinguish between the use of force or restraint and the application of violence. Such a distinction does not feature in human rights law. The key question is whether the use of restraint can be justified in the circumstances. Whilst the Minister robustly states that the Government does not sanction violence against children, this is exactly what current legislation permits, albeit using the

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37 Ev 21.
38 Ev 24.
39 Ev 24.
terminology of “force” rather than violence. We start from the premise that violence against children should be avoided unless absolutely necessary and that very weighty justifications are required to demonstrate the need for force in individual cases.

**PCC in practice**

32. As of April 2007, there were 301 YJB commissioned places in STCs. Restraint was used on more than 3,000 occasions in STCs in 2006 and on 1,249 occasions in the first half of 2007. On average therefore, restraint is used on ten occasions per child per year. It should be noted that distraction techniques are used less frequently – on 30 occasions in the first half of 2007.

33. The issue of the use of restraint in STCs has arisen in the inquests into the deaths of two young people detained in STCs. Gareth Myatt, aged 15, died in Rainsbrook STC in April 2004, three days into a 12 month Detention and Training Order. Gareth died having been restrained in a “seated double embrace” by three officers. Speaking in the House of Commons on 12 July 2007, Sally Keeble MP said of Gareth’s death:

> I want to go through some of what happened to Gareth, so that the full horror is on the record. … Gareth was the last person to use the unit’s sandwich toaster on the Sunday evening and took exception when he was asked to clean it up. “You clear it up,” he told staff. He was asked to go to his room, and the CCTV footage shows him calmly waiting to go to his room, where he was locked in. Shortly afterwards, he was visited by two members of staff—a man and a woman—to discuss his behaviour. He told them to get out of the room because they had no right to be there. He was then told that, because he was not calming down, the staff needed to take some stuff out of his room, and they began doing just that. They took out a magazine, then some papers and pencils. The staff said, “You’re not doing what we asked you, so I don’t see why you should have these.” They then took another piece of paper that had Gareth’s mother’s new mobile phone number on it, and he shouted at them… “Don’t take my mum’s phone number.”

> …

> That was when the struggle started, and it was said that Gareth—a 6 ½ stone boy—clenched his fist and swung it at the man. The officers and Gareth ended up lying on his bed, with one member of staff holding his legs and another holding his upper body. A third officer, also a man, came into the room, and Gareth was placed in an approved hold: a seated double embrace, with two members of staff holding his upper body, his torso pushed forward and one officer holding his head.

> Gareth then said that he could not breathe, so the officer told him, “If you’re shouting, you can breathe.” He then said that he was going to defecate, and was told, “You will have to then,” and he actually did so. Those were his last words. Finally, while still restrained, Gareth was sick. When he was released, he was unconscious.

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42 Ev 35, para. 1.19.


The Use of Restraint in Secure Training Centres

and all attempts at resuscitation failed. One member of staff concluded, “I should never have PCC’ed; he was half my size. It was rather like having run over a cat and then thinking...if I hadn’t gone down that street, it wouldn’t have happened.”

34. This restraint hold had been approved by the Home Office and YJB, and was withdrawn from use following Gareth’s death. Rainsbrook STC is run by Rebound, which provided evidence to the Committee.

35. Adam Rickwood died in Hassockfield STC in August 2004. Several hours before his death, he was restrained using the “nose distraction” technique. After his death, a note was found in Adam’s room, in which he described what had happened. He said:

When I calmed down I asked them why they hit me in the nose and jumped on me. They said it was because I wouldn’t go in my room so I said what gives them the right to hit a 14-year-old child in the nose and they said it was restraint.

36. Reporting to Lancashire’s Safeguarding Children Board on the circumstances surrounding Adam Rickwood’s death, the Serious Case Review Panel was:

… concerned about the use of the “nose distraction” technique, particularly within a system which purports not to rely on pain compliance, but also because it may well involve a breach of Article 3 of the European Convention on Human Rights.

37. The Prison Service Training Manual on PCC notes the potential dangers associated with the use of restraint:

A number of adverse effects are possible following the application of restraints. These include being unable to breathe, feeling sick or vomiting, developing swelling to the face and neck and development of petechiae (small blood-spots associated with asphyxiation) to the head, neck and chest.

…

A degree of positional asphyxia can result from any restraint position in which there is restriction of the neck, chest wall or diaphragm, particularly in those where the head is forced downward towards the knees. Restraints where the subject is seated require particular caution…

38. The YJB has produced a 12 page advisory Code of Practice entitled Managing the Behaviour of Children and Young People in the Secure Estate, part of which deals with restrictive physical intervention. The YJB considers that the Code is consistent with the

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45 HC Deb, 12 July 2007, Col. 1714-1715.
46 Ev 46-53.
50 Youth Justice Board, 2006.
UNCRC and the HRA.\footnote{Ev 36, para. 1.24.} We consider the PCC Manual and the Code more fully in Chapter 4 of this Report.
3 Secure Training Centre (Amendment) Rules

Introduction

39. Section 9 of the Criminal Justice and Public Order Act 1994 sets out the powers and duties of custody officers employed at STCs. Section 9(3) describes custody officers’ powers in relation to those detained at STCs, and in particular, the power to use reasonable force where necessary to ensure good order and discipline, as follows:

(3) A custody officer performing custodial duties at a contracted out secure training centre shall have the following duties as respects persons detained in the secure training centre, namely—

(a) to prevent their escape from lawful custody;

(b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;

(c) to ensure good order and discipline on their part; and

(d) to attend to their well-being.

(4) The powers conferred by subsection (1) above, and the powers arising by virtue of subsection (3) above, shall include power to use reasonable force where necessary.

40. The Secure Training Centre Rules 1998 establish the framework of rules under which STCs must operate. Rules 36 and 38 deal with removal from association and physical restraint respectively. Rule 37 deals with the use of force. Prior to the Amendment Rules, STCs could use physical restraint only to prevent specified risks, that is, to prevent harm to self, others, property, risk of escape, or inciting another to harm himself or others, or damage property. The Rules, as originally in force, did not make any mention of “good order and discipline” as a criterion for the use of restraint. During the oral evidence, Baroness Stern, a member of our Committee, suggested that omitting reference to “good order and discipline” from the original STC Rules may have been deliberate rather than an oversight:

Presumably when the Secure Training Centre Rules were written, somebody thought “This is for children, so we want to have a regime that is more appropriate to children, and so it would not occur to us to allow violence to be used for good order and discipline”.

41. We asked the Minister whether “good order and discipline” had been specifically omitted from the criteria for the use of force when the 1998 Rules were drawn up. He said “I am afraid that our research into this question has not revealed any papers that shed light on the matter.”

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52 Q 16.
53 Ev 19.
42. We have not been able to establish conclusively why the phrase “good order and discipline” was not included in the original STC Rules, but we think it is entirely reasonable to infer from its absence that it was deliberately omitted, and that the reason for that omission was that it is inappropriate in the context of detention of children. Children and young people in detention are in a uniquely vulnerable position. Whilst everyone in detention must be treated with dignity and respect, children in detention have particular needs, distinct from the adult prison population, given their age and stage of development. The use of violence on vulnerable children and young people in detention can rarely be acceptable and risks breaching international human rights standards.

The Amendment Rules

43. The Secure Training Centre (Amendment) Rules 2007 amend Rules 36 and 38, and extend the circumstances in which the use of physical restraint and removal from association are permitted, namely for the purposes of ensuring “good order and discipline”.

44. The Rules are set out below, as they apply to contracted-out STCs, and as amended by the 2007 Amendment Rules. The amendments are shown in bold text:

Rule 36: Removal from association

(1) Where it appears to be necessary for the purposes of ensuring good order and discipline or in the interests of preventing him from causing significant harm to himself or to any other person or significant damage to property that a trainee should not associate with other trainees, either generally or for particular purposes, the governor may arrange for the trainee’s removal from association accordingly.

(2) A trainee shall not be removed under this rule unless all other appropriate methods of control have been applied without success.

(3) A trainee who is placed in his own room during normal waking hours in accordance with arrangements made under this rule shall –

(a) be observed at least once in every period of 15 minutes;

(b) not be left unaccompanied during normal waking hours for a continuous period of more than 3 hours nor for periods which total in aggregate more than 3 hours in any period of 24 hours;

(c) be released from the room as soon as it is no longer necessary for the purposes mentioned in paragraph (1) above that he be removed from association; and

(d) be informed both orally and in writing for the reasons for such placement.

(4) A record shall be kept of each occasion on which a trainee is removed from association under this rule which shall specify –

(a) the name of the trainee;

(b) the date and time removal commenced and finished;
(c) who authorised it;
(d) the reasons for it and that the trainee was informed in accordance with paragraph (3)(d) above; and
(e) any observations made in accordance with paragraph (3)(a) above;

and the record kept in accordance with this paragraph shall be made available, upon request, to the person authorised under rule 43(1) of these Rules to inspect the centre.

(5) The monitor shall be informed within 24 hours of the commencement of any removal from association under this rule and he shall be provided with a copy of the record kept under paragraph (4) above in relation to that removal.

Rule 37: Use of force

(1) An officer dealing with a trainee shall not use force unnecessarily and, when the application of force to a trainee is necessary, no more force than is necessary shall be used.

(2) No officer shall act deliberately in a manner calculated to provoke a trainee.

Rule 38: Physical restraint

(1) No trainee shall be physically restrained save where necessary for the purpose of ensuring good order and discipline or for the purpose of preventing him from

(a) Escaping from custody
(b) Injuring himself or others
(c) Damaging property or
(d) Inciting another trainee to do anything specified in paragraph (b) or (c) above

And then only where no alternative method of ensuring good order and discipline or of preventing the event specified in any of paragraphs (a) to (d) above is available.

(2) No trainee shall be physically restrained under this rule except in accordance with methods approved by the Secretary of State and by an officer who has undergone a course of training which is so approved.

(3) Particulars of every occasion on which a trainee is physically restrained under this rule shall be recorded and notified to the monitor within 12 hours of its occurrence.

45. The very short Explanatory Note to the Amendment Rules made no reference to human rights. The longer Explanatory Memorandum contained practically no reference to human rights, save for a bland assertion that because the instrument does not amend primary legislation, a statement of compatibility with the ECHR is not required. This makes it more difficult to scrutinize the Rules effectively for human rights compatibility.
Whilst we accept that the Human Rights Act 1998 does not require the Government to make a formal Section 19 statement of compatibility for statutory instruments, we consider it to be a matter of good practice for human rights considerations to be addressed in Explanatory Notes and Memoranda where necessary. This should not be an onerous requirement since the Government ought to have conducted an assessment of the human rights impact of the statutory instrument before introducing it. In areas where fundamental human rights are engaged (as they are here), we take the view that secondary legislation should always be accompanied by a statement as to compatibility with the ECHR setting out the reasons why the Government considers the instrument to be compatible.\(^5\) Where secondary legislation raises significant human rights implications, we would expect to see sufficient analysis to facilitate effective parliamentary scrutiny.

**Purpose and effect**

46. Since the Amendment Rules were first proposed, there has been considerable debate about whether or not there was a need for an amendment to the existing Rules; and, if so, whether the amendment which was brought forward by the Government, was appropriate. Furthermore, there is disagreement between the Government and others as to the effect of the Amendment Rules and, in particular, whether they amend or merely clarify the law. This was the central focus of our inquiry.

**Clarification or amendment?**

47. The Ministry of Justice and the YJB suggest, firstly, that the Amendment Rules merely clarify the existing legal position; and, secondly, that they were an appropriate response to the comments of the coroner who conducted the inquiry into the death of Adam Rickwood. We consider each of these in turn.

48. The Explanatory Memorandum to the Rules sets out the Government’s reason for amending Rule 38:

> The duty to ensure good order and discipline …has no complementary power in the 1998 Rules. While the Act makes it clear that reasonable force may be used to ensure good order and discipline, the absence of an explicit power in the 1998 Rules to use physical restraint for this purpose has caused uncertainty. The purpose of the amendment to Rule 38 is to bring the Rules into conformity with the Act.

49. The Minister told us:

> When the Government laid the original order, I tried to ensure that the words “good order and discipline” applied to section 38 of the Secure Training Centre Rules 1998 so that we did have the potential for officials in secure training centres, should they so deem it necessary, to use restraint techniques for the purposes of good order and discipline.\(^5\)


\(^5\) Q 20.
50. The YJB asserts that the change to the Rules was required because there was a lack of clarity in the relationship between the Rules and the Criminal Justice and Public Order Act 1994. In its evidence to the Committee, it stated:

The Criminal Justice and Public Order Act 1994 places a duty on custody officers to maintain good order and discipline. It allows for the use of reasonable force, where necessary, to achieve this. However the Secure Training Centre Rules, which govern the use of restraint in STCs, did not explicitly permit physical restraint to be used for this purpose. Earlier legal advice was that the duty set out in the 1994 Act had primacy over the Secure Training Centre Rules. However, it became apparent at the inquest into the death of Adam Rickwood that this was not clear.\textsuperscript{57}

51. The Amendment Rules were welcomed by Rebound, one of the operators of secure training centres. Rebound stated in its evidence to us:

Currently the PCC manual and STC Rules make this a particularly grey area and open to legal interpretation. Therefore the changes to the STC rules providing clarification in this regard is welcome.\textsuperscript{58}

However, it is far from clear what problems existed under the previous Rules; nor how the “clarification” will assist staff in STCs to do their jobs effectively.

52. We have reviewed two of the contracts with STC operators. The contracts do not envisage the use of force for the purposes of good order and discipline and are very clear on this point:

Each Trainee in custody at the Secure Training Centre will only be subject to Physical Restraint as a last resort when no alternative is available and only to prevent him/her from escaping or from harming him/herself or others or from damaging property, or to prevent him/her from inciting another Trainee to harm him/herself or others or to damage property. Physical force will not be used at the Secure Training Centre on any Trainee for any other purpose nor will it be used on any Trainee simply to secure compliance with staff instructions.\textsuperscript{59}

53. The majority of witnesses to our inquiry expressed concern that the Amendment Rules have made the position less, not more, clear and have effectively expanded the range of circumstances in which restraint may be used. Witnesses expressed fears that the term “good order and discipline” is insufficiently defined and therefore potentially confusing for staff and open to abuse. The National Children’s Bureau told us that restricting the use of force to “risky” situations (as was previously the case) was an “essential safeguard”.\textsuperscript{60} Witnesses were also anxious about the subjective nature of the Amendment Rules, particularly in determining whether or not the use of force was “necessary”, and the discretion that this will place in the hands of staff. The NSPCC and the Children’s Rights Alliance for England argue that the Amendment Rules “will not help staff judge when

\textsuperscript{57} Ev 38, para. 1.45.
\textsuperscript{58} Ev 52, para. 50.
\textsuperscript{59} Contract between the Secretary of State for the Home Department and Medomsley Training Services Ltd (HINF99/855); Contract between the Secretary of State for the Home Department and ECD Oinley (Dep 2008-0401), Schedule D, M5 (our emphasis). Both contracts have been deposited in the parliamentary libraries.
\textsuperscript{60} Ev 44, para. 4.3.
restraint is appropriate”. Even if the intention is not to amend the circumstances in which restraint is permitted, given the vagueness of the term “good order and discipline”, this seems likely to be its effect.

54. In our view, the Amendment Rules, rather than clarifying the position, have themselves created more confusion. It is clear from the evidence that we have received, and the strength of feeling expressed, that the Rules are potentially open to a wider interpretation than was previously the case. Given the fundamental rights that are at stake, this is unacceptable.

55. At face value, the Amendment Rules introduce a new concept, that of “good order and discipline,” into the circumstances in which STC staff can use restraint. We agree with the High Court that the Amendment Rules are more than a simple clarification of pre-existing law. Indeed, the contracts we have seen with two of the STCs make this plain. In our view, the Amendment Rules now appear to permit staff a very wide discretion to determine the extent to which the use of force is necessary for “good order and discipline” and give detained young people less certainty as to the circumstances in which force may be used against them. There is a very real possibility that the Amendment Rules will lead to the use of restraint, not only when staff must take steps to protect others (whether other staff or young people), but where there is no danger to others or risk of escape. Indeed, this was demonstrated by the actual example given to us in evidence by the YJB, in which restraint was used on four boys who were not causing or threatening harm to themselves or others but were refusing an instruction to go to bed. In our view, the use of force in such widened circumstances is unacceptable and unlawful, and in breach of both ECHR standards given domestic effect by the HRA and international human rights standards contained in the UNCRC.

56. The Lord Bishop of Worcester, speaking in the House of Lords debate on the Rules, stated:

One of the things that statutory frameworks do is to create ethos, climates of opinion or cultures.

We see force in this argument. Even if the Government’s intention was merely to clarify the law, in our view there is a very serious risk that frontline staff will regard the change as either extending the circumstances in which they can use restraint or introducing considerable uncertainty about the circumstances in which they can do so.

57. The Minister told us that:

The Coroner at the inquest into Adam’s death recommended urgent action to clarify the law. We acted quickly in response to his recommendation, so that all stakeholders could be clear about the law on the use of restraint

and

61 Ev 67, para. 57.
62 Q 22.
63 HL Deb, 18 July 2007, Col. 296.
64 Ev 15.
The reason we brought the clarification forward was solely on the basis of the coroner’s inquest.65

58. Given the Government’s and the YJB’s reliance on the comments of the coroner to justify the Amendment Rules, we have examined closely the coroner’s recommendation.

59. Following the inquest into Adam Rickwood’s death, the coroner, Andrew Tweddle, wrote to the solicitor for the Secretary of State to “report to interested parties what action should be taken to prevent the recurrence of similar fatalities in the future”, recommending that:

An urgent review should be undertaken to clarify the interrelationship between the Criminal Justice and Public Order Act 1994 (Section 9), the Secure Training Centre Rules issued thereunder and the Directors Rules to avoid any confusion whatsoever. It must be seen as essential that there must be no ambiguity in anyone’s mind, young person, staff, management or those in the YJB or indeed Government as to when the use of restraint or force to maintain good order and discipline or for compliance reasons is authorised.66

60. Subsequently, whilst not expressing a view about the Amendment Rules themselves, the coroner who conducted the inquest into Gareth Myatt’s death also wrote to the Secretary of State for Justice in the following terms:

Whatever Parliament may decide, it is absolutely essential that there is the clearest possible definition of the circumstances in which a trainee can be subjected to physical restraint. Such clarity is required both in the interests of staff and in the interests of trainees. It was apparent during the inquest that staff were not always clear about the reasons for which PCC could be used.67

61. Witnesses have criticised the Amendment Rules on the basis that they do not address the problem the coroner at Adam Rickwood’s inquest raised. As the NSPCC and the Children’s Rights Alliance told us in their joint submission:

The Amendment Rules do nothing to address the Coroner’s concerns, being apparently primarily concerned with the actions of STC staff rather than introducing further safeguards for children”.68

62. The Government suggests that the coroner’s recommendation did not relate to the prevention of fatalities, as the jury did not find that restraint was a causative factor in Adam Rickwood’s death.69 We find this unlikely, given that the coroner both started and concluded his letter by referring to the prevention of fatalities similar to Adam’s case. It seems to us highly probable that the recommendation was intended to limit, not extend, the circumstances in which restraint may be used, and sought clarification that restraint could not be used for the purpose of good order and discipline. Whatever the coroner’s

65 Q 12.
66 Ev 28, para. 10.
68 Ev 67, para. 55.
69 Ev 20.
precise intention, the Amendment Rules pose the very real danger of entrenching in legislation ambiguity for staff and detained young people, the problem which both coroners sought to address. The phrase “good order and discipline” is imprecise, over-broad and inherently subjective. Far from achieving clarity about the circumstances in which physical restraint can be used on a child, as recommended by the coroner in the Rickwood case, instead it brings confusion. Recent events show that the use of force can lead to tragic results. It is therefore of paramount importance that the Rules governing its application leave no room for doubt. The Rules, as amended, do not achieve this.

**Refusal to comply**

63. When the Government informed Parliament of its intention to amend the Rules, it accepted that the term “good order and discipline” is not defined, but attempted to explain what the term would permit:

> We would not anticipate that a refusal to comply with an instruction alone would constitute a breach of good order and discipline. However, where the circumstances of the refusal are such that the refusal to comply with an instruction has wider implications for the safe running of the centre, undermining the general authority of the staff or putting safety or security at risk in some other way, then a genuine concern about good order and discipline may arise.\(^{70}\)

64. The Code of Practice reinforces the view that restraint may not be used as punishment or to secure compliance.\(^{71}\) However, the NSPCC and the Children’s Rights Alliance for England (CRAE) summarise the evidence of experience in practice:

> … the evidence gathered by the Carlile Inquiry, by CRAE through freedom of information requests, by the National Children’s Bureau and through the inquests into the deaths of Adam Rickwood and Gareth Myatt, suggests that physical restraint has been used routinely in STCs for unlawful purposes and, specifically, as a response to non-compliant behaviour.\(^{72}\)

65. Ofsted reported that, in Hassockfield STC, where Adam Rickwood died, restraint was often logged as being used for “non-compliance”.\(^{73}\) 11 Million state:

> Permitting restraint for the purposes of ‘ensuring good order and discipline’ is imprecise and may lead to individual custody officers restraining children or young people for failing to comply with an order such as to tidy up, attend class or go to bed, construing their action as a threat to ‘good order and discipline’.\(^{74}\)

66. When giving evidence to us, we were pleased to hear both the Minister’s and the YJB’s strong resolve not to permit the use of restraint as punishment or to secure compliance. The YJB told us that “it would be a sackable offence” if staff were using restraint in this way and the Minister stated that he would “take a very dim view and would be looking at very

\(^{70}\) HC Deb, 21 June 2007, Col. 113-4WS.

\(^{71}\) Para. 10.4.

\(^{72}\) Ev 66, para. 51.

\(^{73}\) Ev 69, para. 4.

\(^{74}\) Ev 69, para. 2.
serious action” if a STC used restraint for those purposes.\(^\text{75}\) We welcome these comments but note that the structural mechanisms need to be in place to ensure that high level commitments translate into action on the ground. In the following Chapter, we consider some of the current methods for implementing this policy and make suggestions for more effective implementation.

### Consultation

67. The YJB and the Directors of STCs were apparently consulted about the proposed changes to the STC Rules, and were in agreement with the Government’s proposal, but there was no consultation beyond this limited group.\(^\text{76}\) Even the Ministry of Justice’s own panel of experts, the Physical Control in Care Review Panel, was not informed. In any case, the Panel had not met since March 2005.\(^\text{77}\) The Minister confirmed that this was the case, but stated:

\[\ldots\] it should be understood that the panel does not have a continuous existence. In fact, a number of panels have been convened over the years to make recommendations on PCC techniques. There was no panel in existence at the time in question. Perhaps, more importantly, the panel’s role is to advise whether individual techniques are safe, not when restraint should or should not be used.\(^\text{78}\)

68. The Children’s Commissioner, who has “a statutory responsibility to promote awareness of the views and interests of children in England”,\(^\text{79}\) was not consulted. Other witnesses also expressed concern about the lack of public and specialist consultation,\(^\text{80}\) which was also one of the grounds relied on in a recent judicial review application challenging the lawfulness of the Amendment Rules.\(^\text{81}\)

69. The Minister attempted to explain the lack of consultation as follows:

Any consultation exercise would require a policy proposal on which consultees could comment. As we did not intend to change Government policy on the use of physical restraint … we did not consider such an exercise was possible.\(^\text{82}\)

70. In its recent judgment, the High Court disagreed with the Government’s argument, holding that the Amendment Rules could be characterised as a “significant change of policy” giving rise to a duty to consult the Children’s Commissioner.\(^\text{83}\) Given the arguments which have arisen as to the purpose and effect of the Amendment Rules and the judgment of the High Court, we do not accept that consultation about the change was unnecessary or impossible. At the very least, a short period of consultation with

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\(^\text{75}\) Q 28.
\(^\text{76}\) HL Deb, 18 Jul 2007, col. 304.
\(^\text{77}\) Ev 67, para. 63 and Inquest June 2007 Briefing, p. 3.
\(^\text{78}\) Ev 27.
\(^\text{79}\) Ev 69, para. 2.
\(^\text{80}\) Ev 61, para. 2.
\(^\text{81}\) R (on the application of AC) v Secretary of State for Justice [2008] EWHC 171 (Admin).
\(^\text{82}\) Ev 27.
\(^\text{83}\) R (on the application of AC) v Secretary of State for Justice [2008] EWHC 171 (Admin), para. 35.
specialist professionals working in this area should have taken place. This could have prevented some of the anxieties which have been expressed since the Rules came into force, and ensured that the Rules met the coroner’s objectives and protect children’s rights.

Conclusion

71. We were pleased to note that, as at the date of our oral evidence session, there had been no instances of the use of restraint for good order and discipline since the Amendment Rules came into force. We urge the Government and the YJB to continue carefully to monitor the effect of the Amendment Rules; and in particular, to ensure that there is no increase in the number of restraints, and that the use of restraint for the purposes of “good order and discipline” is always strictly necessary and proportionate.

72. We recommend that the Government reports on a six monthly basis to Parliament on the number of restraint incidents, broken down by the specific purposes for which restraint was necessary.

73. The STC Rules need to be clear, so that staff know what they may lawfully do; detained young people and their families know how they may be treated; and resort to physical force only takes place when it is absolutely necessary to avert a risk of serious harm to others. For the reasons we have given above, we do not consider that the current Rules are sufficiently clear about when force can be used and, for that reason, they are both potentially in breach of the UK’s human rights obligations on their face, and likely to lead to such breaches in practice when force is used in circumstances when it is not strictly necessary.

74. We recommend that the Amendment Rules be repealed and the scope of the current STC Rules clarified by Amendment Rules which make it explicitly clear that the use of physical restraint is not permissible for the purposes of good order and discipline. In our view, this would provide a more humane and transparent framework for the effective operation of STCs, which meets the coroner’s objectives and protects appropriately the safety of all children in STCs. Any further amendment to the Rules should this time be preceded by a short period of consultation with the YJB, STCs, Children’s Commissioner and expert NGOs, amongst others. It should also take account of up to date medical advice on the effect of restraint on the physical and mental integrity of detained children and young people.

84 Q 20.
4 The use of restraint in practice

75. This Chapter looks at the use of restraint in STCs in practice; and the effectiveness of the current methods for implementing Government policy. We have particularly focused on areas where we consider that more can be done to ensure that the rights of children and young people in detention are protected.

Roles and responsibilities

76. The Ministry of Justice and the YJB, as public authorities under the HRA, are required to act compatibly with human rights. STCs are private companies with which the YJB contracts to perform the Secretary of State’s and YJB’s statutory duties. Notwithstanding these contractual relationships, the Secretary of State and the YJB retain overall responsibility for ensuring that the rights of children and young people in detention (including STCs) are protected.

77. Concerns have been expressed over the precise responsibilities of the Ministry of Justice and the YJB for PCC. The coroner at Gareth Myatt’s inquest recommended that the two bodies should “publicly clarify where responsibility for the system of PCC and its permitted use lies.”

78. Since June 2007, the Ministry of Justice has had a “shared understanding of policy details with the Department for Children, Schools and Families”. In November 2007, a new joint Youth Justice Unit was launched between the Ministry of Justice and the Department for Children, Schools and Families, which has the aims of:

i) contributing to the protection of the public by developing policy and law in relation to children and young people who offend and are at risk of offending; and

ii) ensuring that children and young people in contact with the criminal justice system achieve all five outcomes of Every Child Matters, i.e. to be healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being.

79. The Unit also sponsors the work of the YJB. Although we requested a copy of the Memorandum of Understanding between the Ministry of Justice and the Department for Children, Schools and Families, this was not provided.

80. We are pleased to note the establishment of a joint unit, which we hope will go some way to dealing with the coroner’s concerns. We urge the unit to ensure that there is greater focus on child protection and the needs and rights of vulnerable children within the criminal justice system. The proposed Memorandum of Understanding should clarify the mutual roles and responsibilities of each of the bodies, to ensure that vulnerable children do not fall between them. We also hope that the new Unit will lead to better monitoring of the YJB and its performance, particularly during this period of transition as a new Chair comes into post.

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85 Coroner’s letter to the Secretary of State for Justice, 18 July 2007.
86 Q 37.
87 Ev 24.
**The reviews**

81. In 2003, the National Children’s Bureau was commissioned by the YJB to undertake a review of physical intervention within secure settings for under 18 year olds. In its evidence to us, the NCB states:

The final report revealed a fragmented approach, with different criteria for both the use of restraint and the methods that could be used.  

82. It identified an urgent need for an evaluation of the safety and effectiveness of restraint techniques. On 26 July 2007, the Government announced a review into the use of restraint. The broad terms of reference of the review are:

… to encompass policy and practice on the use of restraint across a range of juvenile secure settings including Secure Training Centres (STC), Secure Children’s Homes (SCH) and Young Offender Institutions (YOIs).

83. We are pleased to note that the review will encompass, amongst other things, the “operational efficacy, safety (including medical safety) and ethical validity of restraint methods”, staff training and monitoring, and the respective responsibilities of the Ministry of Justice, Department for Children, Schools and Families, the YJB and institutional providers. We would encourage the widest possible review of the use of restraint against children and young people in a variety of settings and urge the Government and the YJB to consider the results of the review carefully and promptly and to publish the review’s findings and the Government’s response in a timely manner.

84. The Ministry of Justice told us that in addition to the broader review which it announced in July, a Medical Review Panel met on 2 November 2007 and plans to meet early in 2008, “before finalising its recommendations to the two Departments”. The Minister assured us that he would reflect on the Panel’s findings and would publish its recommendations and the Government’s response. We welcome the re-establishment of the Medical Review Panel and seek the Government’s assurance that it will now meet regularly and frequently, in order to keep the full range of PCC techniques under careful scrutiny. Following its current deliberations, we recommend that the Review Panel reports annually, at a minimum, on the medical safety of current PCC techniques.

85. We note the evidence of Rebound, who told us of their “significant concerns about the safety of the PCC both for young people and the staff … it is sometimes not possible to put on PCC holds. It is also difficult to safely apply the head support.” We urge the Government to ensure that, as part of the medical review, the views of STCs and specialist organisations are considered, in particular to address any concerns from those being subjected to the use of force or implementing restraint techniques.

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88 Ev 43, para. 1.2.
89 Ev 43, para. 1.2.
90 Ev 24. See also Ev 38, para. 1.43.
91 Q34 and Ev 24.
92 Ev 52, para. 55.
86. We are pleased to note that two techniques were suspended in December 2007, on the basis of medical advice. We recommend that the Government seriously consider the necessity and proportionality of restraint holds or techniques carrying a risk of death or serious injury. There can be no justification for practices which involve the deliberate infliction of pain, such as the so-called “distraction techniques”, and we therefore recommend their abolition without delay.

**Monitoring and reporting**

87. The YJB and Ministry of Justice point to YJB Monitors as an integral safeguard for PCC. The Monitors check the adherence of STCs to their contracts, including their use of restraint. When restraint is used, an incident form must be completed by those involved. These reports may be reviewed by the YJB Monitors. The Minister told us that if the YJB has concerns about the level of restraint in a STC, they will investigate. He also said that the YJB Monitor is able to refer concerns to the local child protection agencies or raise them with the STC itself. He assured us that YJB Monitors are not simply a “rubber stamp”.

88. The Coroner in the inquest into the death of Gareth Myatt made a recommendation about these incident reports. He suggested that:

… every statutory Incident Report involving the use of PCC should contain full details of what happened, statements by those involved, any injury to a trainee or to staff, reasons for the use of PCC and reasons why other means of dealing with the situation were not used or had proved unsuccessful. Such Reports must also include a statement by the trainee, in their own hand where possible, and the form should provide the opportunity for a trainee to report any injury. Up to the time of Gareth’s death there was no input from the child into this Reporting system. The new Reports should include a facility for both staff and trainees to conclude what lessons they had learned from the incident and how PCC might be avoided on a future occasion.

This need for the trainee’s account… came to be referred to during the Inquest as “listening to the voice of the child”. That phrase is a telling one, and is one that ought to be borne in mind by everyone at all times.

**We agree with this recommendation.**

89. According to the Minister, “specific training in PCC … is being arranged for Monitors of STCs” and that “some Monitors already have this [training] but require refresher training”. We find it astonishing that YJB Monitors, one of the safeguards relied on by the Government and the YJB for the safe use of restraint, have not until now

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93 See UN Committee on the Rights of the Child, General Comment 8 (2006), para. 15.
95 Ev 50, para. 29 and Ev 25.
96 Ev 25.
97 Q 27.
98 Letter from His Honour Judge Pollard to the Secretary of State for Justice, 18 July 2007, Action 2.
99 Ev 26.
100 Ev 26.
routinely been trained on restraint procedures themselves. We recommend that this omission be urgently rectified. All YJB Monitors should receive initial training in restraint techniques and any YJB Monitors who have been trained previously should receive regular refresher training. There should be specific monitoring of the effect of the Amendment Rules both in quantitative (i.e. the number of restraints) and qualitative terms, with the reporting of results to this Committee and Parliament.

Duties of Secure Training Centres

90. The Secretary of State for Justice has recently confirmed to us that, in his view, non-governmental bodies providing contracted-out services in the criminal justice system, such as STCs, are functional public authorities for the purposes of the Human Rights Act 1998 and are therefore subject to the Act in respect of those contracted-out functions. We have reviewed two contracts with STCs. The contracts set out the duty of the STC contractor as follows:

The Contractor shall at all times operate the STCs in accordance with all relevant statutory provisions including but not limited to the 1994 Act, the Prison Act 1952 and the STC Rules.

91. Although the contracts are over 130 pages long, plus Schedules, they make only two references to human rights (namely, including the Human Rights Act in legislation listed in the “interpretation” section; and referring to the possibility of trainees complaining to the European Commission on Human Rights (abolished in 1998)), despite containing discrete sections on sex and race discrimination and data protection. The requirement to act compatibly with human rights is not an express contractual requirement which is subject to audit. We see this as further evidence of the failure to put the rights and needs of children and young people at the heart of the STC regime. We recommend that human rights obligations be included in the body of any future contracts with STC providers and that Schedule H include compliance with human rights obligations within the performance measures under the contract. In addition, the YJB should write to existing STC providers to explain their human rights obligations and reiterate the expectations of the Secretary of State.

92. Following the introduction of the STC (Amendment) Rules, the Chief Executive of the YJB wrote to all STCs to inform them of the effect of the Amendment Rules. The YJB told us that they made explicit “its view that the change to the rules governing restraint in STC should not lead to an increase in the use of restraint.” In her letter, the Chief Executive stated that restraint should not be used for compliance and should only be used as a last resort where no alternative method is available. The Minister told us that since the Chief Executive of the YJB had written to STCs about the Amendment Rules, “the onus is now...
on operators to ensure that their staff understand and follow the Rules.” 105 The YJB told us that it is a matter of the STCs’ “operational judgement” as to whether or not restraint is necessary, and they can be held to account for the judgment that they make. 106

93. When we asked what guidance is provided to staff themselves to enable them to assess, in advance, whether or not the force they intend to use is proportionate, the Minister noted that STCs issue “local operating instructions to staff” to assist them in making judgements. 107 We have not been provided with examples of such local operating instructions. It is vitally important that operating instructions are clear, accessible, and provide worked examples of different situations, to demonstrate to staff how to determine if the force is or is not an action of last resort, and how to decide whether an action is necessary and proportionate. We recommend that the YJB actively monitor the local operating instructions, to ensure that they meet STCs’ human rights obligations and accurately reflect the legal position.

94. In their joint evidence to the Committee, the NSPCC and the Children’s Rights Alliance for England comment that:

Concerns have been raised about potential conflicts of interest, given that the private firms managing STCs must meet targets for children’s participation in education in order to secure financial rewards. It became apparent from interviews with children during the Carlile inquiry that restraint was being used to ensure children attended education sessions. 108

95. The Minister told us that:

It would not be my policy nor indeed that of the chief executive to have restraint techniques used to encourage individuals to participate in educational opportunities. The STC rules themselves are in the contract for the STCs and it is understood that they have to adhere to that contract as well as the Code of Practice. 109

96. We were pleased to hear the Minister’s assurance that restraint is not permitted to enable STCs to meet educational or other targets. We urge the YJB to continue to pay close attention to any correlation between targets and restraint.

97. The NSPCC and the Children’s Rights Alliance for England advocate that:

There should be a legal duty on all providers of education, health and custodial settings that use physical restraint to inform children and their parents or carers of their restraint policy, the methods used and the safeguards in place. 110

105 Ev 25.
106 Q 27.
107 Ev 25.
108 Ev 67, para. 58. See also Howard League for Penal Reform, An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes, January 2006, p. 43.
109 Q 38.
110 Ev 62, para. 15.
98. Section 7 of the Secure Training Centre Rules 1998 requires STCs to provide a detained young person:

... with information in writing about those provisions of these Rules and other matters which it is necessary that he should know, including privileges, incentives and sanctions, contact with members of his family or independent persons and the proper method of using the grievance procedure.

99. When we asked the Minister for his views on the suggestion of a duty to provide information on physical restraint, the Minister told us that he would reflect on it, but did not want to pre-empt the review. Requiring STCs to provide affected individuals with their restraint policies may assist staff and detained young people and their families and carers to understand when restraint may be used. In the absence of any countervailing argument (which we cannot discern), we see no good reason for keeping such policies secret. Indeed, it seems to us that Section 7 of the Rules already requires information on restraint to be provided to detainees and their families and carers. We recommend that this provision should be immediately implemented by STC operators.

100. According to the YJB, under its contract with STC providers, all custody staff must undertake a training course which must include training on physical restraint by accredited Home Office instructors. Refresher physical restraint training must be given at regular intervals (at least once a year) by accredited instructors. Rebound described to us the way it trains its STC staff in the use of restraint:

23. All staff employed by Rebound are fully trained in PCC techniques. During the ITC staff must successfully complete and pass an initial five-day intensive PCC course. In order to maintain the Home Office certification as a Custody Officer staff are required to have annual refresher training which is a one-day course delivered by a PCC instructor. Rebound staff undertake PCC refresher every 6 months which is above contractual requirements.

24. Initially the HM Prison Service trained all staff employed by Rebound in PCC. The Prison Service then devised a PCC Instructor’s course which was approved by the Home Office. Selected candidates from Rebound undertake a two-week training course which is delivered by the Prison Service. Once the candidates have completed and successfully passed the course they are accredited by the Prison Service to train others in PCC. The instructors have an annual week’s refresher training by the Prison Service to maintain their accreditation. They follow the PCC manual which is written by the Prison Service and approved by the YJB.

101. Staff are not provided with a copy of the PCC manual, although the Ministry of Justice states that it is reviewing what written guidance custody officers need.

102. Both the coroners who conducted the recent inquests into the deaths of Gareth Myatt and Adam Rickwood identified problems with existing staff training. The coroner at

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102. Both the coroners who conducted the recent inquests into the deaths of Gareth Myatt and Adam Rickwood identified problems with existing staff training. The coroner at
Gareth Myatt’s inquest recommended that the Ministry of Justice and the YJB consider teaching PCC at national level by national instructors or, as a bare minimum, that the Ministry of Justice institute nationally based supervision and inspection of local teaching.\textsuperscript{115} The Minister told us that this recommendation was being considered by the PCC Management Board.\textsuperscript{116} The coroner at Adam Rickwood’s inquest suggested that there was confusion amongst trainers “with regard to PCC its application and the reasons therefore and when if ever guidance in the appropriate manuals could be disregarded”.\textsuperscript{117}

103. Ensuring that staff are appropriately trained is vital in the protection of the rights of detained young people and children, particularly where restraint is permitted. This requires both frontline staff and their instructors to be absolutely clear on the circumstances in which restraint is permitted. We are concerned to hear that staff considered that there might be circumstances in which guidance need not be followed. We recommend that all staff working in STCs receive targeted and regular training in human rights principles and how they apply to their work, including the use of restraint. This should be included as a core training requirement in Appendix 7 of Schedule D to the standard contract with STCs. Further, all staff, whether or not they are already trained, should receive training, as a matter of urgency, on the effect of the Amendment Rules. Standard training should be regularly reviewed, to ensure that it remains accurate and up to date. Training of STC staff should be subject to supervision and monitoring by the Ministry of Justice.

**Code of Practice**

104. In 1998, the YJB published a 12 page Code of Practice entitled *Managing the Behaviour of Children and Young People in the Secure Estate*, which has no statutory force, but is issued as guidance. In its evidence, the YJB states:

> We believe that the standards set out in our Code of Practice reflect, and are compliant with, international conventions and treaties, including the United Nations Convention on the Rights of the Child.\textsuperscript{118}

105. The Code is written in very general terms. Relevant parts of the Code of Practice include:

- restrictive physical interventions must only be used as the result of a risk assessment;
- restrictive physical interventions must not be used as a punishment, or merely to secure compliance with staff instructions; and
- the degree of physical intervention must be proportionate to the assessed risk.\textsuperscript{119}

106. The Minister and the YJB deny that the Code of Practice needs to be amended in the light of the Amendment Rules.\textsuperscript{120} However, in answer to our questions in oral evidence, the

\textsuperscript{115} Coroner’s letter to the Secretary of State for Justice, 18 July 2007, p. 11.
\textsuperscript{116} Ev 25.
\textsuperscript{117} Ev 28, para. 5.
\textsuperscript{118} Ev 36, para. 1.24.
\textsuperscript{119} Code of Practice, paras. 10.2, 10.4 and 10.9.
Minister agreed that the Code could be revised in the light of the review’s recommendations.121

107. Whilst we welcome the Government’s commitment to amending the Code in the light of the review, we consider that it should have amended the Code when the Amendment Rules came into force, given the different ways in which the Rules can be interpreted and, therefore, the potential for ambiguity they create. We recommend that there be a presumption that the Code be amended whenever the Rules are amended, in order to ensure that there is no confusion in the minds of staff about the effect of any Amendments on what they are and are not permitted to do. As part of, or in addition to the Code, very detailed guidance needs to be provided to staff on the precise circumstances in which restraint may lawfully be used. We consider this further in the paragraphs which follow.

**Physical Control in Care Training Manual**

108. The part of the PCC Manual produced by the Prison Service for training instructors in PCC, which details the restraint holds and techniques, is not publicly available. According to the Minister, “dissemination of it could affect security at secure training centres”.122 In oral evidence, we pursued the Government’s reasons for restricting access to the whole of this document, noting that we would be better able effectively to scrutinise its compatibility with human rights standards if we could read it. The Minister resisted the suggestion that the manual should be made public, stating:

> The public scrutiny of those techniques is not something I would wish to see, not for the reason of lack of public scrutiny but because, ultimately, they are techniques which are used for control.123

109. The Minister has subsequently amplified his response stating:

> The Prison Service considers that placing descriptions of the individual techniques in the public domain might lead to their being attempted by people who had not received the necessary training. That could place people at risk.

> During the hearing of oral evidence, Dr Harris made the point that other potentially dangerous information, for example about surgical techniques, was in the public domain. However, that may be because of the practical difficulty or impossibility of limiting its availability, rather than the desirability of its being widely available.124

110. The YJB concurred with the Minister’s view, which was based on the Prison Service’s advice stating:

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120 EV 15.
121 Q 35.
122 EV 15.
123 Q 4.
124 EV 23.
If how the techniques are used is understood then it is possible for young people to develop counter-techniques, and so it affects the overall efficacy of the system.\textsuperscript{125}

111. We were alarmed by the headings of some of the redacted sections, namely ‘hair grab’, ‘strangle against the wall’, ‘strangle on the ground’, ‘kicks standing’ and ‘kicks on the floor’. It was not possible to ascertain the content of these sections. We have seen the remaining publicly available parts of the manual which set out, in summary form, some of the human rights principles which apply. We were alarmed to see that there is little guidance about the core material that should be covered by instructors during the training, in order to ensure consistent standards across STCs. Indeed the Manual notes that “it is not possible to reproduce within this manual all the teaching points that instructors must necessarily relate to trainees as only a brief description of the techniques and systems of PCC training is given”, and advises instructors to produce their own comprehensive lesson plans.\textsuperscript{126} We also note that the manual is intended for instructors of PCC, but is not aimed at or provided to staff who are trained to use restraint.

112. We recommend that the training manual (which should be disseminated to all STC staff who are authorised to use PCC, and all instructors and monitors) be regularly reviewed and, if necessary, updated to ensure that it remains current and accurate. Staff need to be absolutely clear about the circumstances in which restraint is lawfully permitted. The manual should make clear that violence is allowed only in narrowly construed circumstances. Furthermore, the manual needs to provide greater guidance to instructors about the core elements of which staff using restraint need to be aware and to follow, in order to ensure consistency and clarity across the STC estate. Finally, the manual should be updated as a matter of urgency to remove reference to the two suspended techniques.

113. We have examined the rationale for not publishing the manual in its entirety. We do not consider that the Minister or the YJB have made a convincing case for continuing confidentiality. We are also very concerned by the impossibility of scrutinising for human rights compatibility techniques of physical restraint which remain secret. We therefore recommend that the entire manual be made publicly available, including on the websites of the Ministry of Justice, the Department for Children, Schools and Families, the Youth Justice Board and the Prison Service. A full copy should also be placed in the libraries of both Houses.

\textit{Last resort}

114. Rule 38 provides that physical restraint may only be used where “no alternative method” is available. The YJB’s Code of Practice states that “restrictive physical intervention must only be used as a last resort, when there is no alternative available or other options have been exhausted.”\textsuperscript{127} An example of the deficiencies in the Manual is demonstrated in its consideration of staff reporting of restraint incidents.

\textsuperscript{125} Q 7.
\textsuperscript{126} p. 44.
\textsuperscript{127} Para. 10.6.
115. We pressed the Minister and the Youth Justice Board on the evidence that they would expect to see, to demonstrate that restraint had been used as a last resort and after all other options had been exhausted. In particular, we questioned whether it was possible to prove, with any degree of certainty, that all options had been exhausted. Such a position is beneficial to neither detained young people nor to staff. The Minister stated:

The [YJB] Monitor and the STC Director will consider what other options (if any) were attempted, and whether options that were not attempted might have been attempted with any realistic prospect of success. If the matter is referred to the Youth Justice Board, it will also consider those questions.\textsuperscript{128}

116. Staff involved with a restraint incident are required to produce reports after the event. This appears to be one method of determining whether or not the force used was lawful. The PCC Manual explains the rationale for staff reports as follows:

The purpose of the member of staff writing the report is to justify their actions and to demonstrate that the use of force was:

- reasonable in the circumstances
- necessity [sic]
- no more force than was necessary
- proportionate to the seriousness of the situation.

Copies of the Use of Force Report Form may be produced for internal or external investigations. It is important that when a written statement is given it creates as full a picture as possible in order to justify the actions that have been taken.\textsuperscript{129}

117. Difficulties inevitably arise when attempting to prove that no alternatives to a particular course of action were available and, that force was used as a last resort. Accessible guidance is needed for staff, so that they understand clearly the actions that they need to consider before they use force. This should not be a “tick box” exercise, but should enable staff to be confident that they are carrying out their work lawfully and with full respect for the rights of all those in their care.

118. We are concerned that the focus of the manual is on justifying staff action, rather than on explaining what happened, justifying the use of force as lawful and that, where it was not, ensuring appropriate action is taken and lessons learnt for the future. The manual appears to prioritise the needs of staff over the needs of detainees. We recommend that the YJB review the PCC manual to address these concerns.

\textsuperscript{128} Ev 24.

\textsuperscript{129} pp. 29-30.
Conclusions and recommendations

Introduction

1. The state has a duty to ensure that detained young people and STC staff are protected from abuse or violence. It is therefore incumbent on the state to take positive steps to ensure that detainees and staff are not injured by other detainees, and conversely that detainees are not injured by staff. (Paragraph 29)

2. We are dissatisfied by the Minister’s explanation of how current policy and practice comply with human right standards. The Minister appears to be suggesting, first of all, that the state is not required to comply with General Comments of the UN Committee on the Rights of the Child, and simply with the Convention itself. While this may be strictly correct as a matter of international legal obligation, we are very disappointed by the Government’s apparent lack of respect for the interpretations of the UNCRC by the UN Committee in its General Comments. We regard these comments as being fundamental to an understanding of the State’s obligations under the UNCRC. (Paragraph 30)

3. The Minister also appears to distinguish between the use of force or restraint and the application of violence. Such a distinction does not feature in human rights law. The key question is whether the use of restraint can be justified in the circumstances. Whilst the Minister robustly states that the Government does not sanction violence against children, this is exactly what current legislation permits, albeit using the terminology of “force” rather than violence. We start from the premise that violence against children should be avoided unless absolutely necessary and that very weighty justifications are required to demonstrate the need for force in individual cases. (Paragraph 31)

4. On average, restraint is used on ten occasions per child per year. (Paragraph 32)

5. We have not been able to establish conclusively why the phrase “good order and discipline” was not included in the original STC Rules, but we think it is entirely reasonable to infer from its absence that it was deliberately omitted, and that the reason for that omission was that it is inappropriate in the context of detention of children. Children and young people in detention are in a uniquely vulnerable position. Whilst everyone in detention must be treated with dignity and respect, children in detention have particular needs, distinct from the adult prison population, given their age and stage of development. The use of violence on vulnerable children and young people in detention can rarely be acceptable and risks breaching international human rights standards. (Paragraph 42)

6. Whilst we accept that the Human Rights Act 1998 does not require the Government to make a formal Section 19 statement of compatibility for statutory instruments, we consider it to be a matter of good practice for human rights considerations to be addressed in Explanatory Notes and Memoranda where necessary. This should not be an onerous requirement since the Government ought to have conducted an assessment of the human rights impact of the statutory instrument before
introducing it. In areas where fundamental human rights are engaged (as they are here), we take the view that secondary legislation should always be accompanied by a statement as to compatibility with the ECHR setting out the reasons why the Government considers the instrument to be compatible. Where secondary legislation raises significant human rights implications, we would expect to see sufficient analysis to facilitate effective parliamentary scrutiny. (Paragraph 45)

7. In our view, the Amendment Rules, rather than clarifying the position, have themselves created more confusion. It is clear from the evidence that we have received, and the strength of feeling expressed, that the Rules are potentially open to a wider interpretation than was previously the case. Given the fundamental rights that are at stake, this is unacceptable. (Paragraph 54)

8. At face value, the Amendment Rules introduce a new concept, that of “good order and discipline,” into the circumstances in which STC staff can use restraint. We agree with the High Court that the Amendment Rules are more than a simple clarification of pre-existing law. Indeed, the contracts we have seen with two of the STCs make this plain. In our view, the Amendment Rules now appear to permit staff a very wide discretion to determine the extent to which the use of force is necessary for “good order and discipline” and give detained young people less certainty as to the circumstances in which force may be used against them. There is a very real possibility that the Amendment Rules will lead to the use of restraint, not only when staff must take steps to protect others (whether other staff or young people), but where there is no danger to others or risk of escape. Indeed, this was demonstrated by the actual example given to us in evidence by the YJB, in which restraint was used on four boys who were not causing or threatening harm to themselves or others but were refusing an instruction to go to bed. In our view, the use of force in such widened circumstances is unacceptable and unlawful, and in breach of both ECHR standards given domestic effect by the HRA and international human rights standards contained in the UNCRC. (Paragraph 55)

9. Even if the Government’s intention was merely to clarify the law, in our view there is a very serious risk that frontline staff will regard the change as either extending the circumstances in which they can use restraint or introducing considerable uncertainty about the circumstances in which they can do so. (Paragraph 56)

10. The Amendment Rules pose the very real danger of entrenching in legislation ambiguity for staff and detained young people, the problem which both coroners sought to address. The phrase “good order and discipline” is imprecise, over-broad and inherently subjective. Far from achieving clarity about the circumstances in which physical restraint can be used on a child, as recommended by the coroner in the Rickwood case, instead it brings confusion. Recent events show that the use of force can lead to tragic results. It is therefore of paramount importance that the Rules governing its application leave no room for doubt. The Rules, as amended, do not achieve this. (Paragraph 62)

11. Structural mechanisms need to be in place to ensure that high level commitments [not to permit the use of restraint as punishment or to secure compliance] translate into action on the ground. (Paragraph 66)
12. Given the arguments which have arisen as to the purpose and effect of the Amendment Rules and the judgment of the High Court, we do not accept that consultation about the change was unnecessary or impossible. At the very least, a short period of consultation with specialist professionals working in this area should have taken place. This could have prevented some of the anxieties which have been expressed since the Rules came into force, and ensured that the Rules met the coroner’s objectives and protect children’s rights. (Paragraph 70)

13. We were pleased to note that as at the date of our oral evidence session, there had been no instances of the use of restraint for good order and discipline since the Amendment Rules came into force. We urge the Government and the YJB to continue carefully to monitor the effect of the Amendment Rules; and in particular, to ensure that there is no increase in the number of restraints, and that the use of restraint for the purposes of “good order and discipline” is always strictly necessary and proportionate. (Paragraph 71)

14. We recommend that the Government reports on a six monthly basis to Parliament on the number of restraint incidents, broken down by the specific purposes for which restraint was necessary. (Paragraph 72)

15. The STC Rules need to be clear, so that staff know what they may lawfully do; detained young people and their families know how they may be treated; and resort to physical force only takes place when it is absolutely necessary to avert a risk of serious harm to others. For the reasons we have given above, we do not consider that the current Rules are sufficiently clear about when force can be used and, for that reason, they are both potentially in breach of the UK’s human rights obligations on their face, and likely to lead to such breaches in practice when force is used in circumstances when it is not strictly necessary. (Paragraph 73)

16. We recommend that the Amendment Rules be repealed and the scope of the current STC Rules clarified by Amendment Rules which make it explicitly clear that the use of physical restraint is not permissible for the purposes of good order and discipline. In our view, this would provide a more humane and transparent framework for the effective operation of STCs, which meets the coroner’s objectives and protects appropriately the safety of all children in STCs. Any further amendment to the Rules should this time be preceded by a short period of consultation with the YJB, STCs, Children’s Commissioner and expert NGOs, amongst others. It should also take account of up to date medical advice on the effect of restraint on the physical and mental integrity of detained children and young people. (Paragraph 74)

17. We are pleased to note the establishment of a joint unit, which we hope will go some way to dealing with the coroner’s concerns. We urge the unit to ensure that there is greater focus on child protection and the needs and rights of vulnerable children within the criminal justice system. The proposed Memorandum of Understanding should clarify the mutual roles and responsibilities of each of the bodies, to ensure that vulnerable children do not fall between them. We also hope that the new Unit will lead to better monitoring of the YJB and its performance, particularly during this period of transition as a new Chair comes into post. (Paragraph 80)
18. We would encourage the widest possible review of the use of restraint against children and young people in a variety of settings and urge the Government and the YJB to consider the results of the review carefully and promptly and to publish the review’s findings and the Government’s response in a timely manner. (Paragraph 83)

19. We welcome the re-establishment of the Medical Review Panel and seek the Government’s assurance that it will now meet regularly and frequently, in order to keep the full range of PCC techniques under careful scrutiny. Following its current deliberations, we recommend that the Review Panel reports annually, at a minimum, on the medical safety of current PCC techniques. (Paragraph 84)

20. We urge the Government to ensure that, as part of the medical review, the views of STCs and specialist organisations are considered, in particular to address any concerns from those being subjected to the use of force or implementing restraint techniques. (Paragraph 85)

21. We are pleased to note that two techniques were suspended in December 2007, on the basis of medical advice. We recommend that the Government seriously consider the necessity and proportionality of restraint holds or techniques carrying a risk of death or serious injury. There can be no justification for practices which involve the deliberate infliction of pain, such as the so-called “distraction techniques”, and we therefore recommend their abolition without delay. (Paragraph 86)

22. We agree with [the Coroner’s] recommendation [that every Statutory Incident Report involving the use of PCC should contain full details of what happened, statements by those involved, any injury to a trainee or to staff, reasons for the use of PCC and reasons why other means of dealing with the situation were not used or had proved unsuccessful. Such Reports should also include a statement by the trainee, and provide the opportunity for the trainee to report any injury]. (Paragraph 88)

23. We find it astonishing that YJB Monitors, one of the safeguards relied on by the Government and the YJB for the safe use of restraint, have not until now routinely been trained on restraint procedures themselves. We recommend that this omission be urgently rectified. All YJB Monitors should receive initial training in restraint techniques and any YJB Monitors who have been trained previously should receive regular refresher training. There should be specific monitoring of the effect of the Amendment Rules both in quantitative (i.e. the number of restraints) and qualitative terms, with the reporting of results to this Committee and Parliament. (Paragraph 89)

24. We recommend that human rights obligations be included in the body of any future contracts with STC providers and that Schedule H include compliance with human rights obligations within the performance measures under the contract. In addition, the YJB should write to existing STC providers to explain their human rights obligations and reiterate the expectations of the Secretary of State. (Paragraph 91)

25. It is vitally important that operating instructions are clear, accessible, and provide worked examples of different situations, to demonstrate to staff how to determine if the force is or is not an action of last resort, and how to decide whether an action is necessary and proportionate. We recommend that the YJB actively monitor the local
operating instructions, to ensure that they meet STCs’ human rights obligations and accurately reflect the legal position. (Paragraph 93)

26. We were pleased to hear the Minister’s assurance that restraint is not permitted to enable STCs to meet educational or other targets. We urge the YJB to continue to pay close attention to any correlation between targets and restraint. (Paragraph 96)

27. Requiring STCs to provide affected individuals with their restraint policies may assist staff and detained young people and their families and carers to understand when restraint may be used. In the absence of any countervailing argument (which we cannot discern), we see no good reason for keeping such policies secret. Indeed, it seems to us that Section 7 of the Rules already requires information on restraint to be provided to detainees and their families and carers. We recommend that this provision should be immediately implemented by STC operators. (Paragraph 99)

28. Ensuring that staff are appropriately trained is vital in the protection of the rights of detained young people and children, particularly where restraint is permitted. This requires both frontline staff and their instructors to be absolutely clear on the circumstances in which restraint is permitted. We are concerned to hear that staff considered that there might be circumstances in which guidance need not be followed. We recommend that all staff working in STCs receive targeted and regular training in human rights principles and how they apply to their work, including the use of restraint. This should be included as a core training requirement in Appendix 7 of Schedule D to the standard contract with STCs. Further, all staff, whether or not they are already trained, should receive training, as a matter of urgency, on the effect of the Amendment Rules. Standard training should be regularly reviewed, to ensure that it remains accurate and up to date. Training of STC staff should be subject to supervision and monitoring by the Ministry of Justice. (Paragraph 103)

29. Whilst we welcome the Government’s commitment to amending the Code in the light of the review, we consider that it should have amended the Code when the Amendment Rules came into force, given the different ways in which the Rules can be interpreted and, therefore, the potential for ambiguity they create. We recommend that there be a presumption that the Code be amended whenever the Rules are amended, in order to ensure that there is no confusion in the minds of staff about the effect of any Amendments on what they are and are not permitted to do. As part of, or in addition to the Code, very detailed guidance needs to be provided to staff on the precise circumstances in which restraint may lawfully be used. (Paragraph 107)

30. We recommend that the training manual (which should be disseminated to all STC staff who are authorised to use PCC, and all instructors and monitors) be regularly reviewed and, if necessary, updated to ensure that it remains current and accurate. Staff need to be absolutely clear about the circumstances in which restraint is lawfully permitted. The manual should make clear that violence is allowed only in narrowly construed circumstances. Furthermore, the manual needs to provide greater guidance to instructors about the core elements of which staff using restraint need to be aware and to follow, in order to ensure consistency and clarity across the STC
estate. Finally, the manual should be updated as a matter of urgency to remove reference to the two suspended techniques. (Paragraph 112)

31. We have examined the rationale for not publishing the manual in its entirety. We do not consider that the Minister or the YJB have made a convincing case for continuing confidentiality. We are also very concerned by the impossibility of scrutinising for human rights compatibility techniques of physical restraint which remain secret. We therefore recommend that the entire manual be made publicly available, including on the websites of the Ministry of Justice, the Department for Children, Schools and Families, the Youth Justice Board and the Prison Service. A full copy should also be placed in the libraries of both Houses. (Paragraph 113)

32. Accessible guidance is needed for staff, so that they understand clearly the actions that they need to consider before they use force. This should not be a “tick box” exercise, but should enable staff to be confident that they are carrying out their work lawfully and with full respect for the rights of all those in their care. (Paragraph 117)

33. We are concerned that the focus of the manual is on justifying staff action, rather than on explaining what happened, justifying the use of force as lawful and that, where it was not, ensuring appropriate action is taken and lessons learnt for the future. The manual appears to prioritise the needs of staff over the needs of detainees. We recommend that the YJB review the PCC manual to address these concerns. (Paragraph 118)
Annex: Human rights standards

Use of force generally

1. The use of force on people deprived of their liberty raises a number of human rights issues including:
   - the right to life;
   - the prohibition of torture and inhuman or degrading treatment or punishment;
   - the right to respect for private life, including physical and psychological integrity;
   - non-discrimination.

2. In the case of Keenan v United Kingdom, the European Court of Human Rights laid down the general principle that:

   In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminished human dignity and is in principle an infringement of the right set forth in Article 3.130

3. All of these rights are protected by the major human rights instruments, including the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). Under the UN Convention Against Torture, states are required to take effective legislative, administrative, judicial or other measures to prevent acts of torture or inhuman and degrading treatment.131

Treatment of children

4. In the context of this inquiry into the use of restraint on children and young people, the standards set out in the UN Convention on the Rights of the Child (UNCRC) are particularly relevant.

5. Our predecessors reported on the UNCRC, and expressed concern that the degree of physical restraint experienced by children in detention contravened the UN Convention.132 The UNCRC and its Committee have taken a particular interest in the rights of children deprived of their liberty. Beyond the general protections which are contained in the ICCPR and ECHR, the UNCRC sets out particular human rights standards for children including:

   - every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age;133

131 Article 2(1).
133 Article 37(c).
• States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.\textsuperscript{134}

6. In its General Comment 10 (2007) on Children’s Rights in Juvenile Justice, the UN Committee on the Rights of the Child set out in more detail the treatment and conditions which were acceptable where children were deprived of their liberty:

Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violations of the rules and standards should be punished appropriately.\textsuperscript{135}

7. In the same General Comment, the Committee also elaborated on its understanding of the concept of dignity in Article 40, stating that children should be treated in a manner that is consistent with the child’s sense of dignity and worth:

The CRC provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law:

Treatment that is consistent with the child’s sense of dignity and worth. This principle reflects the fundamental human right enshrined in article 1 UDHR that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of the CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way through to the implementation of all measures for dealing with the child;

... Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.”\textsuperscript{136}

8. In the UN Committee on the Rights of the Child’s General Comment 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Articles 19, 28(2) and 37, inter alia), the Committee recognises:

\textsuperscript{134} Article 40(1).
\textsuperscript{135} Para. 28(c).
\textsuperscript{136} Para. 4(e).
… that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control.\textsuperscript{137}

9. In its most recent concluding observations on the UK (in 2002), the Committee on the Rights of the Child urged the UK Government 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 \{torture and deprivation of liberty\} and 25 \{periodic review of placement\}.

10. The UK’s third and fourth periodic reports are due to be considered by the Committee on the Rights of the Child in September 2008.

11. In 2006, in a report requested by the UN Secretary-General, a UN Study on Violence against Children recognised the particular vulnerability of children in detention, reporting that “violence against children while in justice institutions … is more common than violence against children placed in institutions solely for the provision of care”. The study called upon Governments to prohibit all violence in care and justice systems and to ensure quality staffing and training for all those who work with children in those settings.\textsuperscript{138}

\textbf{Positive obligations}

12. There are two types of obligations owed by states: positive and negative. A positive obligation requires states to undertake specific preventive or protective actions to secure human rights (including the prevention of ill-treatment administered by private individuals or bodies). Negative obligations require them to refrain from taking certain actions. Some examples of positive obligations include investigating deaths in custody, protecting vulnerable persons from ill-treatment, and securing respect for private life. Positive obligations can require the state to take steps to protect individuals from the actions of third parties, such as other detained young people. For example, under its Article 2 ECHR duty to secure the right to life, the State is required to take appropriate administrative and legislative steps to protect the lives of those involuntarily in its custody from the criminal acts of others.\textsuperscript{139} In such circumstances, the use of force may be justified in order to prevent a serious or life threatening attack.

\textsuperscript{137} Para. 15.

\textsuperscript{138} Independent Expert for the UN Secretary-General, \textit{Study on Violence Against Children} (2006), Ch. 5, p. 190.

\textsuperscript{139} \textit{R (Amin) v Secretary of State for the Home Department} [2004] 1 AC 653, para. 30.
Formal Minutes

Tuesday 26 February 2008

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness  John Austin MP
The Earl of Onslow  Dr Evan Harris MP
Baroness Stern  Mr Virendra Sharma MP

******

Draft Report [The Use of Restraint in Secure Training Centres], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 118 read and agreed to.

Annex read and agreed to.

Summary read and agreed to.

Several Papers were ordered to be appended to the Report.

Resolved, That the Report be the Eleventh Report of the Committee to each House.

Ordered, That the Chairman make the Report to the House of Commons and that Baroness Stern make the Report to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

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[Adjourned till Monday 3 March 2008 at 4pm.]
List of Witnesses

Wednesday 10 October 2007

The Rt Hon David Hanson MP, Minister of State, Department of Justice  Ev 1  
Ms Ellie Roy, Chief Executive, Youth Justice Board  Ev 1
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HL Paper 278/HC 1716
Oral evidence

Taken before the Joint Committee on Human Rights

on Wednesday 10 October 2007

Members present:

Fraser of Carmyllie, L
Plant of Highfield, L
Judd, L
Stern, B

Nia Griffith
Dr Evan Harris
Mr Richard Shepherd

In the absence of Mr Andrew Dismore, Lord Plant of Highfield was called to the Chair

Witnesses: Rt Hon David Hanson, a Member of the House of Commons, Minister of State, Department of Justice, and Ms Ellie Roy, Chief Executive, Youth Justice Board, examined.

Q1 Lord Plant of Highfield: First of all, a warm welcome to the Minister, Rt Hon David Hanson, MP, and to Ellie Roy, the Chief Executive of the Youth Justice Board. The purpose of the session is to assist the Committee in its scrutiny of the Secure Training Centre (Amendment) Rules 2007. I should point out that I am not the usual Chair of this Committee: the usual Chair, Andrew Dismore is away, and I am acting in his place. Is there anything that either of you would like to say by way of preamble, or would you like to go straight into the questions?

Mr Hanson: I am happy, Lord Plant, to go straight into questions, if you are content.

Q2 Lord Plant of Highfield: I will ask some rather general questions to start with. Just for the benefit of the public attenders of this session, there will be some acronyms used and perhaps the main one will be “PCC” which means physical control in care, as I am sure most people present will know but just to be on the safe side. First of all, we understand that restraint holds and distraction techniques can be used against children who have been deprived of their liberty in secure training centres. The parts of the Prison Service’s manual which describes those holds is not publicly available and we have not therefore been able to scrutinise their compliance with human right standards. Perhaps to start with you could describe exactly what the techniques involve.

Mr Hanson: I will be grateful to do that, Lord Plant. The techniques themselves are operational matters and, if it is acceptable to the Committee, it may be appropriate if Ellie Roy answers that question.

Ms Roy: The techniques involve holds on young people which do not, in the main, use pain. They are designed to restrict the young person’s movement. They start off from a low-level type of move, which involves placing hands on, as though you were saying to someone, “Come on, let’s go offside and deal with this matter elsewhere.” Right through to possibly three members of staff actually placing the hold on the young person to restrict their movement. It moves through from sort of low-level and can escalate to three members of staff being involved.

There is always the supervisor involved if it moves beyond the simple one-hand-on by one member of staff. The techniques do not, as I say, depend on use of pain, which is different from the technique used in Prison Service control and restraint. There are, however, three specific moves called “distraction techniques” which are specifically designed to inflict a very brief burst of pain in order to allow breakaway in an extreme situation. One of those is pressure to the base of the nose, which should be momentary; the second is a thumb in the rib; and the third one is called a “thumb distraction”, so it is bending of the thumb. The distraction techniques should only be used in the most extreme circumstances, when it is necessary to literally distract the young person momentarily to get the situation under control. For example, if a member of staff walks into a situation where one young person is attacking another, and there is only one member of staff and, for example, that member of staff may be female and of small stature and the trainee may be large, then the member of staff needs to be able to intervene very quickly in that situation and might use a distraction technique in that type of circumstance in order to bring the situation very quickly under control while other staff arrive at the situation.

Q3 Lord Plant of Highfield: In his letter to the Committee, the Minister has suggested that making the PCC manual available to the public could affect security at secure training centres. Could you explain why you think that is so?

Mr Hanson: From my perspective, I have taken the view, which is shared by the operational executives in this matter, that the use of those control techniques are ones which should be kept private. Obviously, if the manual is public, the techniques that are being used are being described publicly and, in theory, could be extrapolated elsewhere. I feel that they are techniques that are being used by staff on individuals. They are techniques which require training and a great deal of expertise in undertaking those techniques and I do not wish to have the techniques distributed widely.
Q4 Baroness Stern: I am sorry to interrupt, but could you explain what you mean by “extrapolated elsewhere” because I do not think my colleagues or I understood.

Mr Hanson: If we publish the use of those techniques, then we are basically saying how those techniques can be used, and I think it is matter of public safety that we keep the use of those techniques in-house, that we allow members of staff who have been trained to understand those techniques. The public scrutiny of those techniques is not something I would wish to see, not for the reason of lack of public scrutiny but because, ultimately, they are techniques which are used for control and I do believe that it is a matter for the Youth Justice Board to keep those techniques in-house.

Q5 Dr Harris: I am still not sure. You are saying you are worried about “copy-cat” use.

Mr Hanson: I am concerned that, in the principle of using these techniques, individuals have training, individuals have support to use them, and I do not believe that it is in the public interest to have that information shared more widely as to how those techniques are implemented and, also, in case of individuals potentially using those techniques elsewhere.

Q6 Dr Harris: I do not understand why the same does not apply to manuals of surgical techniques or, indeed, martial arts or, indeed, how guns work or things like that. Everything could potentially be used by people who were without good training but there is a balance between that and keeping things secret in this area.

Mr Hanson: I have taken the view—and it is a historical view, not just taken by myself but by previous ministers—that we need to keep the use of those techniques in-house to people who have been trained to do so, not least of which potentially could also be for the fact that young people or individuals who are subject to those techniques could be aware of how they are used and could potentially, as a result of that, both avoid the use of the technique and also potentially cause difficulties to those people who are using the technique on the individual. It is a matter of debate, I have been happy to reflect upon it, but the judgment of both the operational and the political officials responsible for this is that the techniques should be kept private from the formal publication of the manual.

Q7 Mr Shepherd: How can we, Parliament or anyone, assess whether these are proportionate or appropriate or anything without knowing what they are?

Mr Hanson: I have put in place recently a range of measures whereby we can publicly scrutinise these matters. The techniques that are used are subject to, first of all, section 9 of the Criminal Justice Public Order Act 1994, which sets out the legislative framework for the techniques that are being used. It is subject also now to the Secure Training Centre Rules which have been recently amended. I have recently put in place scrutiny for members of staff at the local level but also via the Youth Justice Board and also now via a new committee which I have established, which will meet for the first time next month, which will comprise of organisations involved in the use of the techniques but also organisations involved in the scrutiny of techniques, such as Ofsted, to be able to look on an expert basis at the level of use, the type of use, the cases where use has caused difficulties and, particularly, to look at the cases where there are concerns. Direct scrutiny is there and I am accountable to Members of both Houses of Parliament for the operation of the Act. Ellie Roy and the Board are accountable to the board of the Youth Justice Board and also to myself as the Minister.

Ms Roy: I wonder if I might add to what the Minister has said. The Prison Service has been very clear that they do not want the manual distributed widely. One of the reasons for that is if how the techniques are used is understood then it is possible for young people to develop counter-techniques, and so it affects the overall efficacy of the system. If the Committee would like, we could organise a demonstration of the techniques for the Committee, because we would be perfectly prepared to do that.

Q8 Lord Plant of Highfield: Either that or, alternatively, make a copy of the manual available privately to the Committee, because it is extremely difficult to see how we could discharge our function of scrutinising how public authorities act in a way that is compliant with the Human Rights Act without having this information.

Mr Hanson: I am very happy, my Lord Chairman, to reflect on that, and in the spirit of cooperation I am content to look at that. I do not wish, for the reasons I have described and also Ellie Roy has described, to see it having a wider circulation.

Q9 Lord Fraser of Carmyllie: Without asking you to disclose what is in the manual, would I find in it a heading which says “These techniques are to be used only against children”?

Ms Roy: I am racking my brains and I do not think there is any such . . . These techniques are used in the secure training centres, they are used in the Youth Justice Centre in Northern Ireland, and they are used in some of the immigration centres, so there is nothing that says that they are only used for children and young people.

Q10 Lord Fraser of Carmyllie: I can understand, if this is a technique that is used for both children and for adults, the point that has been put to us of extrapolation. I can see why for security reasons you might be concerned about adults. I am toiling rather more with the idea of what is this extrapolation to other children?

Mr Hanson: The techniques themselves are used by the Immigration Advisory Service against individuals in their care. On the board I have just described, which I have established very recently, on taking up post, I have put in place a range of bodies,
including the Immigration Service on that board to look at the operation of those techniques and general training matters.

Lord Plant of Highfield: Since you have undertaken to reflect on the two alternatives, either of demonstrating these techniques to us or giving us a private copy of the manual, we will perhaps leave that issue for the moment. Dr Harris is going to ask questions.

Q11 Dr Harris: Thank you. I wanted to explore the justification for the new rules. I think there have been two reasons put forward, one is that there was in incompatibility with the Criminal Justice and Public Order Act 1994, and, secondly, that there was a need to clarify the law. I think those are two separate justifications that have been given by you and the Youth Justice Board. On the clarification issue, could you clarify in what sense you thought the law was unclear and how it is now clarified?

Mr Hanson: The issues arose following the inquest into the death of Adam Rickwood at Hassockfield Secure Training Centre in 2004. If the Committee cares to look at the Criminal Justice and Public Order Act 1994, section 9 subsection 3(c) includes the words “to ensure good order and discipline on their part” as part of the “Powers and duties of custody officers employed at contracted out secure training centres.” Section 9 of the Criminal Justice and Public Order Act does indicate the terms in which secure training centres can use restraint techniques. The Secure Training Centre Rules 1998, which were introduced following the establishment of secure training centres, do include under section 38 indications of how physical restraint can be used under that aspect of legislation, and within that there was no mention of the phrase “good order and discipline”. During the course of the inquest into the death of Adam Rickwood at the training centre, the coroner did bring to the attention of the Government, to my predecessor in post Bridget Prentice MP, that there was concern over the lack of clarity on that particular issue. The coroner requested that we consider ensuring that we examine how the two sets of legislative capacity worked together and did make a recommendation as a result of the coroner’s report that we should include a need for clarifying the Secure Training Centre Rules 1998 which were incompatible and you knew that it needed to be clarified. 

Q12 Dr Harris: Let me get this right: you think it is not an incompatibility between the two but a lack of clarity in it.

Mr Hanson: It is a lack of clarity, in the sense that section 9, as I hope the Committee has been able to examine, does have the words under section 3(c) “to ensure good order and discipline on their part” and

the Secure Training Centre Rules 1998 do not include that particular aspect. In order to clarify, essentially, the two pieces of legislation, the coroner did request that we include the clarification, and the amendment we brought forward for consideration reflected that clarification. The reason we brought the clarification forward was solely on the basis of the coroner’s inquest.

Q13 Baroness Stern: Could I follow that up. I have been trying to understand these matters of law. The Secure Training Centre Rules were drafted for institutions that held children. We are agreed on that.

Mr Hanson: The Secure Training Centre Rules 1998 covered the secure training centres.

Q14 Baroness Stern: Which were intended to be for children, aged under 18.

Mr Hanson: Yes.

Q15 Baroness Stern: I assume the “Powers and duties of custody officers . . . ” this draft from the 1994 Act, was a general provision about all contracted out custodial establishments.

Mr Hanson: Yes.

Q16 Baroness Stern: Presumably when the Secure Training Centre Rules were written, somebody thought, “This is for children, so we want to have a regime that is more appropriate to children, and so it would not occur to us to allow violence to be used for good order and discipline.” Or is that a complete misunderstanding of why there is a difference?

Mr Hanson: Unfortunately, Lady Stern, I was not present at the time and therefore I cannot comment on what colleagues said in 1998 or 1994, but the point I wish to make is that, because of the clarification the coroner sought, we determined that there was a need for clarifying the Secure Training Centre Rules 1998, section 38 on physical restraint, to make them similar and to clarify the difference between the 1994 legislation and the 2007 amendment which we have eventually brought forward.

Q17 Dr Harris: I have two concerns, which maybe you can answer together to speed things up. Firstly, in our evidence we have had the Youth Justice Board saying that the change was required because they were incompatible and you knew that it needed to be clarified, but at the inquest, as I understand it, the Youth Justice Board accepted that the force used to ensure good order and discipline would be unlawful. As I understand it, the Youth Justice Board during the inquest did not think there was a lack of clarity; they said it was quite clear to them that they thought it would be unlawful.

Mr Hanson: The discussions, as I understand them—and obviously I was not present at the inquest but I have looked at the information—were that counsel for the contractors pointed to section 9 of the Criminal Justice Public Order Act as giving the authority for the use of the restraint and counsel for Adam Rickwood’s family argued that only those

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1 Note by witness: Strictly speaking, section 9 empowers custody officers in contracted out secure training centres to use reasonable force, where necessary, to discharge their statutory duties.
purposes listed in section 38 of the Secure Training Centre Rules applied. The coroner decided that it was not necessary for the purposes of the inquest to reach a view on the precise position but recommended urgent action to clarify the relationship between section 9 and section 38. My predecessor in post decided to act upon that and tabled the amendment accordingly for implementation from July 6.

Q18 Dr Harris: My understanding is that the coroner requested clarification of the law to prevent future deaths in custody. He did not say, “To provide good order and discipline, we must have clarification.” He said that there needed to be clarification to prevent future deaths in custody, which to my mind would mean, let us be absolutely clear, section 38 should read as it reads, and it should not be, for some of the reasons Lady Stern gives, read into from the 1994 Act.

Mr Hanson: Again, my understanding—and there may be an honest difference between us on this in terms of interpretation—is that the coroner decided that it was not necessary for the purposes of the inquest to reach a view on the precise position but recommended urgent action to clarify the relationship between the two pieces of legislation. That is what we have done, to try to clarify that. Again, to widen the debate, if I may, my Lord Chairman, in response to the concerns that were raised in the House of Lords during the debate, I have established a review in general terms of the use of restraint, across the board, jointly with my colleague Beverley Hughes, the Minister of State for the Department of Children, Schools and Families, because, when I entered my current position on the appointment of the current Prime Minister, I reviewed both the debate that was going to take place on 6 July and determined that I wanted to have a wider review of the use of restraint in general terms, rather than simply the amendment that was being brought forward at the time.

Q19 Lord Plant of Highfield: Obviously the interchange can carry on but I do wonder if it might be helpful if you provide a note as to whether there was any consideration in 1998 of the omission from the Secure Training Centre Rules of reference to good order and discipline. That might be the way of trying to resolve this rather than trading objective interpretations.

Mr Hanson: I think it would be helpful. I will certainly make investigations for the Committee. As I said, my Lord Chairman, I was not present at the time. Although in the House, I was not present at the time, and I will certainly examine what information I can supply to the Committee about that interpretation.

Q20 Baroness Stern: I wonder whether I could just ask whether clarify means “clarify” or whether clarify means “decide that it applies”. It would be very helpful if you could say what you mean, because clearly there was a question as to whether the rules about custody officers would apply to all custody officers or were drafted for adult prisons. Does clarify mean that it is somewhere set out that this is the case and you have just made it clear to us all, or have you done something a bit more interpretative in putting these two pieces of legislation together?

Mr Hanson: When the Government laid the original order, I tried to ensure that the words “good order and discipline” applied to section 38 of the Secure Training Centre Rules 1998 so that we did have the potential for officials in secure training centres, should they so deem it necessary, to use restraint techniques for the purposes of good order and discipline. I can also tell the Committee that, since the regulations have been made on July 6, no accidents in any of the secure training centres have been undertaken where individuals have used restraint techniques for the purposes of good order and discipline but we did wish to add that dimension to give clarity to the regulation and also to give the officers the potential to use restraint in that circumstance should it unfortunately arise as a last resort.

Q21 Dr Harris: This point about clarity is a critical one, because you have relied on it several times and, indeed, as you know, the coroner in the Gareth Myatt case, in his rule 43 letter to the secretary of state, said “ . . . . it is absolutely essential that there is the clearest possible definition of the circumstances in which a trainee can be subjected to physical restraint. Such clarity is required both in the interests of staff and the interests of trainees.” But we have had a lot of views, in the evidence submitted from the NCB, the NSPCC, Children’s Rights Alliance, 11 Million, all arguing—and I can see there point—that the use of the words “good order and discipline” lead to less clarity because there is going to be more subjectivity by staff about what is required compared to the previous rules that talked about clear risk situations. Good order and discipline could mean anything. Ask anyone.

Mr Hanson: The definition of good order and discipline is crucial to the deliberations that we have today. Essentially, I have been very clear, as was Lord Hunt when he took the legislation through the House of Lords, that physical restraint, in total, must be used as a last resort when there is no available alternative and all other options have been exhausted. During the debate in the House of Lords from Lord Carlile, Lord Hunt said, “A threat to good order and discipline is more than a simple refusal to follow an instruction from a member of staff. It must involve behaviour which puts the safe running of the wider establishment at risk.” My colleague Bridget Prentice, in her original ministerial statement on 21 June said, “We would not anticipate that a refusal to comply with an instruction alone would constitute a breach of good order and discipline. The implications for the safe running of the centre of undermining the general authority of staff or putting safety or security at risk in some other ways, then a genuine concern about good order and discipline may arise.” It is subjective. It is down, in part, to the common sense of members of staff on the ground. I can talk later, my Lord
Chairman, if you wish, about some of the training aspects we have put in place, but, from my perspective, it is a last resort. It is to do with situations whereby the threat to the establishment of good order and discipline is in place. I am sure Ellie will be very happy to talk to Members about some of the specific instances which might arise which help to clarify our thinking.

Q22 Dr Harris: Before she does so, because I am running out of time on my questions, the fact that it is a last resort does not go to the subjectivity, because as a last resort it is still subjective, I suggest. In that statement you read out from the House of Lords, there was reference, and indeed required reference—in other words there were no other circumstances in that paragraph—to the safety of running the establishment, which is already covered, as I understand it, in the original wording of the rules, because it talks about risks to others. I do not understand, given that in the response to that debate from one of the quotes that you gave you resort to have regard to the safe running of the establishment, why you would need to change to something much more vague, beyond what was already in rule 38, talking about good order and discipline. Do you understand what I am saying?

Mr Hanson: I say to Dr Harris again, the reason that the amendment was brought forward was because it was not the Government that sought clarity, it was the coroner who asked the Government to consider clarifying that by adding clarification on that issue of good order and discipline. We have put that in. My definition of that is subjective, I accept, but it is about being a last resort and dealing with the safe running of the wider establishment at risk. To date, in secure training centres, it has not been used in other words there were no other circumstances in that paragraph—to the safety of running the establishment, which is already covered, as I understand it, in the original wording of the rules, because it talks about risks to others. I do not understand, given that in the response to that debate from one of the quotes that you gave you resort to have regard to the safe running of the establishment, why you would need to change to something much more vague, beyond what was already in rule 38, talking about good order and discipline. Do you understand what I am saying?

Ms Roy: I wonder if it might help if I gave a practical example. With all these things the Youth Justice Board has been clear, as the Minister says, that use of force should be a last resort. Everything else should be tried beforehand. We have a monitoring system. The operators are expected to monitor their running of the wider establishment at risk. To date, in secure training centres, it has not been used in other words there were no other circumstances in that paragraph—to the safety of running the establishment, which is already covered, as I understand it, in the original wording of the rules, because it talks about risks to others. I do not understand, given that in the response to that debate from one of the quotes that you gave you resort to have regard to the safe running of the establishment, why you would need to change to something much more vague, beyond what was already in rule 38, talking about good order and discipline. Do you understand what I am saying?

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Q23 Dr Harris: In the Rickwood case, the coroner, as I understand it, called for there to be clarification of the law to prevent further deaths in custody; in other words, wanting further safeguards for children—not more room for manoeuvre for staff, although that may happen in consequence of what happens, but further safeguards for children. I would like to know how the amendment rules address the concerns of the coroner about the lack of safeguards for children deprived of their liberty because nothing you have said strikes me as more safeguards for children.

Mr Hanson: Dr Harris, the coroner called for clarity and we tried to secure clarity in the amendment that was being brought forward. In the wider issues, the Government and the Lord Chancellor will be responding to the coroner’s report very shortly and will be detailing in response to a range of concerns that the coroner put as part of his inquest consideration. I understand the coroner did not actually say himself why he was calling for clarification but determined that there should be a form of clarification. We are considering the inquest report. The Lord Chancellor has given a commitment to publish his response shortly. Indeed, he will be meeting, I think next week, the families of Adam Rickwood and Gareth Myatt to talk through the response to the coroner’s report. So I am not in a position, I am afraid, today to detail that level of response, but I will say again, which I hope is helpful to the Committee, that as part of the background to the Adam Rickwood inquest and indeed the Gareth Myatt inquest I have established a review of restraint in juvenile secure settings across the board. I have taken a decision that not just in STCs but in all settings where restraint is used with individuals...
under the age of 18, we should have an examination across the board. The terms of reference, which I published at the end of July, cover policy and practice on the use of restraint, operational safety, medical safety, ethical validity, training, arrangements for departmental knowledge, the responsibilities of officials at a local level, and I have appointed the chairs this very week, with my honourable friend the Member for Stretford & Urmston, Beverley Hughes, to establish a review of the whole issue of the use of restraint in the children's estate. I hope the Committee will welcome that. I am not trying to pre-empt what that Committee will say but it is important that we do have an opportunity, in the light of both inquests, in the light of the coroner’s report and in the light of the legislation that we brought forward, to clarify for ourselves in both Houses, following this report, what should be the regime used, why and when and how, with regard to restraint across the board.

Q24 Dr Harris: This is now my final question, because I just want to pin this down. There is no doubt that the coroner wanted clarification, but I would be interested to know what makes you think that the coroner’s clarification was that it should be made clear that restraint could be used for the purposes of good order and discipline as opposed to the coroner saying he wanted clarification to make it clear that it cannot be used for that purpose. Or do you accept you are interpreting the coroner’s alleged remarks in one direction? My understanding was it was the latter.

Mr Hanson: The coroner, as I understand, has refused to take a view on that. I am just reading from my notes of the coroner’s report: the coroner himself decided that it was not necessary for the purpose of the inquest to reach a view on the precise position in relation to the implementation of the legislation but recommended simply urgent action to clarify the interrelationship between section 9 and rule 38.

Q25 Dr Harris: Either way.

Mr Hanson: Either way. We have put in place good order and discipline under rule 38 in the amendment but we are also going to respond very shortly, via the Lord Chancellor, with the families being informed about those changes, as to our response to the parliamentary report. In the wider context, without repeating myself, I have agreed now to look across the board at how we operate the system of restraint. I came to responsibility for the Youth Justice Board on June 26, although I had been in the Ministry of Justice earlier, and shortly after that, in the two weeks after that, I have taken a decision early to have a wider review because I was not satisfied that the simple discussion in the House of Lords with Lord Carlile was sufficient to satisfy myself that we were content with the way in which it was operating. That wider review is being undertaken now.

Lord Plant of Highfield: I am sure the Committee welcome the establishment of the review, but I think we need to move now to the next phase of questions. Baroness Stern.

Q26 Baroness Stern: Thank you very much. I would like to echo what my Lord Chairman said. There is no doubt that we welcome the moves that you have taken but we do still have a duty to think about what has happened in the past and to try to ensure that things are different. My question is back really to the difficulties of subjectivity. In relation to each individual use of restraint, what evidence would you expect to see to demonstrate that force had only been used where it was necessary and where there was no alternative?

Mr Hanson: On each use of restraint, Lady Stern, of which there were about 3,000 last year, every time use of restraint is undertaken there is a mechanism to monitor the use of that restraint and whether or not it was appropriate in those circumstances. At a local level, first of all, the secure training centre itself will monitor and discuss the use of the incidents of restraint, but in each secure training centre, as I am sure you will be aware, there is a Youth Justice Board monitor or an assistant monitor who will establish and be notified of all uses of restraint and who will review those uses of restraint, particularly the ones where there is some concern being raised about the use of that restraint in particular. There is a very small number of cases, I think something like 54 in the last year out of the 3,000, where a more detailed report was brought forward. Those reports will be sent to the Youth Justice Board. The Youth Justice Board will examine those numbers of reports. It will look at whether there are particular lessons that need to be learned within that, and, indeed, will discuss that with the Youth Justice Board medical advisors, with the Prison Service if necessary. It will seek advice, and, ultimately—and it has done, as I will ask Ellie to explain—it will make some changes in operational practice if there are lessons to be learned out of that. As the chief executive mentioned earlier, the use of restraint can be notified as something simply as much as touching an elbow to move somebody on at the most extreme minimalist level, through to more serious levels of restraint. The serious levels of restraint are recorded. All levels are investigated and the monitor for the Youth Justice Board will examine each case in detail and will make judgments accordingly.

Q27 Baroness Stern: Could I perhaps ask the question again: what evidence would you expect to see—and when I say you, I think I must mean your officials, and in this case I am talking about a Youth Justice Board monitor—so that you could decide whether the force that was used was necessary and that there was no alternative? We have very helpfully had an example from Ellie Roy where she felt there was no alternative and she gave us an indication of why she felt that. We could argue about that, but it is not appropriate to do so. I wonder if one of you could say where is the evidence that you would look for when you look at this case and you say, “This should not have happened because it was not...
necessary and there was an alternative” and “This, we can accept, should have happened”. Can you help us with that?

**Ms Roy:** I will do my best to help with that, because I think the Minister has helpfully described the system that operates. I do not know that I did say, Lady Stern, that I accepted that it was absolutely necessary to use force in the previous incidents, because it is a matter for operational judgment and it is the responsibility of those who are running the centres to make that judgment. They can be held to account for it. The Youth Justice Board has to monitor that to satisfy ourselves that they are rigorously reviewing their own practices and we can then look at the evidence that they present for how they are doing that. I can tell you that in the secure training centres, although the practices vary between the four of them—and we are working to make sure that we get best practice up to speed on all of them, but, for example, they will look on a daily basis—the director of the centre or the duty manager, will look at the incidents that have occurred on that day. They then have a weekly review meeting in which they look at the incidents which have happened in the course of that week. That involves looking at not just one account of the incident but the account of the three or four people who have been involved in the incident. That will involve the medical staff who have been present. They then have to distil from that what happened on that occasion—because, as you can imagine, these can be fairly fraught and frenetic situations and you get different accounts depending on where people came into it, where they were standing in the room and what their participation was. The other thing that is really important is it is not just what happened during the incident, but it is the precursor to that: it is what happened beforehand. Did somebody provoke the young person? Was the young person particularly frustrated? Was the young person angry? Was the young person upset, perhaps about some letter from home or lack of visit or whatever? What was the precursor and was that managed properly? This is quite complex when you get into it in terms of making a judgment, which is why I say it is very difficult for me to make a judgment, sitting where I do not allow restraint to be used, either as a punishment or to secure compliance, to make sure somebody obeys an order?

**Mr Hanson:** Yes.

**Ms Roy:** That is absolutely correct. We are absolutely adamant. It must not be used, either as a punishment or to secure compliance, to make sure somebody obeys an order. Compliance is one of those terms that I think has been bandied about as interchangeable with good order and discipline. They are very different. It may be that you need young people to comply to maintain good order and discipline, because you need to intervene, but using restraint for compliance is simply not acceptable.

**Mr Hanson:** I would take a very dim view and would be looking at very serious action if any contractor did undertake restraint techniques for those purposes.

**Q29 Lord Judd:** I hope you will agree that the Convention on the rights of the Child is highly relevant policy in this area. You do agree.
Mr Hanson: Yes.

Q30 Lord Judd: The UN Committee on the Rights of the Child has put it very clearly; “...this inherent right to dignity and worth, to which the preamble of the CRC makes explicit reference has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way through to the implementation of all measures for dealing with the child”. Can you explain to the Committee how the use of force on children deprived of their liberty is compatible with our obligations as a nation under international human rights law, obligations which require that treatments should be consistent, as I have just said, with the child’s sense of dignity and worth?

Mr Hanson: I do think it is important to recognise the United Nations’ Convention on the Rights of the Child and I do think it is important to work within that, but I have to accept, also, in policy terms, that there is a need to ensure that we have, in that phrase we have used so far, “good order and discipline” in centres, not just for the benefit of the centre or for the Youth Justice Board or for the staff in the centre, but sometimes also for the benefit of other children or young people who are in that centre who may be subject to violence or physical attack or intimidation or a range of other matters from other young people in the centre. It is unfortunate—I would wish to see no element of restraint ever used in centres—but I understand that there are needs, for a range of reasons, not least the protection of children themselves, that staff have to undertake that type of activity. In the wider review of the use of the restraint that I have ordered, I have asked my colleagues who are chairing the review to look at the ground rules, the compatibility, the efficacy and also at how we can ensure that we have, across the board, consideration of the use of those techniques. But, within that, I still have to accept that there are areas where it may need to be used, and I am sure that the chief executive will concur with that.

Ms Roy: I think the Minister has covered the point, but I wondered if I might speak about the reason why restraint is necessary and the situations in which it is necessary. A number of the young people who get custodial sentences are there for very difficult and very serious offences. Approximately half of those who are in custody at any one time are there for offences which involve some sort of violence. A number of those young people are quite seriously disturbed. We have had incidents where we have had a young woman who was so seriously disturbed we have had to clear part of a hospital wing so that she could be held there because she was so violent to other people around her. We have had young people who repeatedly throw themselves/run into walls, self-harming. We had a young woman who took a microwave plate into her room and smashed it and used the glass to self-harm. The attacks are often self-harming attacks, which the staff have to restrain in order to stop the young people hurting themselves, but there are often attacks on other young people or, indeed, on staff. I can tell you that in the first five months of this year we have had 98 staff injuries reported and six of those with serious injuries that involved hospitalisation because of the level of attacks. Whilst it is absolutely not the case that all young people behave in this way when they are in custody, we do see some very, very serious behavioural problems and they are very difficult to deal with. The other thing is that these young people are actually detained at a point in their lives when they would normally be out roaming the streets with their friends, with a lot of freedom and so on. We bring them into a situation in which they are in quite confined circumstances. Although some of the facilities are reasonably okay, they are very clausrophobic. I was in a facility last week where there were eight young men. They were 16—we call them children, but they were quite large, or at least six of them were—and it was really clausrophobic in there. If you think of them having to live in that situation day in, day out, with three or four members of staff, things do get very sort of tense and explosive at times, particularly if you have a young person whose behaviour is extremely disturbed in that way. I had a conversation with the young people last week and I asked them—because the levels of restraint in the establishment I was visiting had been much higher—“Tell me about the use of restraint in here?” and they said, “Oh, it wasn’t good a couple of months ago, but it’s much better now.” I said, “Well, what’s happened?” and they said, “There were three or four very difficult and very violent individuals in here and that’s what pushed the numbers up.” The young people themselves were saying that. They actually want protection in those sorts of situations. I think we should not underestimate the challenges that we face here. The other thing is that while if you were in a school or in some other type of institution the young person can walk off the premises or can be excluded from the premises, you cannot do that from a secure establishment. The most we can do is to move them on to somewhere else and try to plan the care there and see if we can get the right facilities to manage them. But, at the end of the day, the end of the line is the secure establishment, you cannot exclude them from it, so there has to be a way for the staff to manage them. I just feel that it might be helpful to the Committee if I did spell that out.

Q31 Lord Judd: Thank you for that helpful statement. While all of us would agree—I do not believe there is anyone on this Committee who would disagree—that you have an immensely difficult task and that the people in the frontline faced with the children day in, day out have a very demanding task—it would be foolish to deny that, none of us would even want to suggest that we deny that—if you recognise that the dignity and worth of the child is not just a woolly liberal principle but central to the rehabilitation of the child and enabling the child to be an effective citizen on release, as distinct from just kids and other problems. But, at the end of time, would you not agree that sometimes the very most difficult children are the ones with whom it is most important to try working at this concept of dignity and worth?
Mr Hanson: From the training centres that I have visited from my time as minister, there is a tremendous amount of dignity displayed by staff towards the rights of individuals. We are putting in place programmes not just to incarcerate but also to prevent re-offending in due course when individuals are released. There is a lot of work done in terms of skill development, education, training. Respect Agenda, showing personal respect to individuals, but, as the chief executive has said, there are some very challenging circumstances and in those circumstances when there is a physical threat to the order of the establishment or to a member of staff or when an individual wishes to self-harm or when individuals are involved in attacks on other individuals who are incarcerated, there may be well be a need for those techniques to be used. In the wider context, I want to have a review as to getting the ground rules established and looking at the policy around that—which is why I have established the review post these regulations being amended. That review, at the end of the day, will undoubtedly say there is a need for the Respect Agenda to be there but also the need for the control of some very difficult individuals.

Ms Roy: I wonder if I might speak about that. The Youth Justice Board has developed a code of practice for behaviour management—because we have been doing a lot of work on how behaviour is managed—and we have a published code. Perhaps I might just read some sections from it, some of the core principles. The first of them is that there is an expectation of good behaviour and it says: “While this document inevitably sometimes focuses on problem behaviour there should also be a strong emphasis on the importance of encouraging and rewarding positive behaviour. The expectation of good behaviour must be promoted as the norm.” We also say that the code is based on the premise that “an important driver of angry and sometimes violent behaviour is the feeling of powerlessness that young people may experience regarding their living circumstances and care arrangements to which they are subject. That is why significant attention is paid in the code to consultation mechanisms, complaint systems and advocacy. Children and young people who have an effective way of raising concerns and problems are less likely to resort to challenging behaviour.” We have a pilot on restorative justice, wishing to embed restorative justice principles at the heart of restorative management. The final principle is that there should be good relationships between staff and young people: “We believe that the most important factor that influences the behaviour of children and young people is the quality of the relationships that are made between caring adult staff and those in their care, set within the context of an organisational culture that is child-centred. If this cultural tone does prevail within the establishment, the promotion of positive behaviour, where challenging behaviour is the exception rather than the norm, is unlikely to be achievable.” That is our code of practice and that is not a document which just sits on a shelf. We actively require the secure training centres to audit their practices against this on an annual basis. We then check whether or not we are satisfied that their self-assessment is justifiable and they have to produce actions as to how the are going to move forward and develop their practice to make sure the whole regime is based on positive behaviour and positive relationships between the care staff and the young people.

Mr Hanson: I will be happy, my Lord Chairman, if members wish, to circulate copies of the code to members of the Committee.

Lord Plant of Highfield: I think that would be useful.

Q33 Lord Judd: I find it very encouraging that you take this line in terms of political leadership, that it must be seen as a last resort. That is encouraging. But would you say that you have in place as convincing rules, explicitly and carefully set out for how conduct should be undertaken in this area, compared, for example, with the Police and Criminal Evidence Act Codes of Conduct which are very specific about the use of force as a last resort—and not just saying the use of force should be a last resort but explaining why this is important. Do you have that in easily understood language for the staff in the frontline?

Mr Hanson: There is a code and I think the chief executive is happy to answer on that.

Q34 Lord Judd: Can you tell the Committee when the results of the medical review of PCC will be made publicly available? In answering that question, perhaps you could also tell us whether you have ever considered abolishing techniques which carry a risk of death or serious injury or are deliberately intended to inflict pain. If you have considered them, why have you not abolished them?

Mr Hanson: With regard to the Medical Committee, I am expecting to receive evidence from the Medical Committee on 2 November.3 I have to take some

3 Note by witness: The medical review panel is due to meet on 2 November, but its comments and recommendations may not be available immediately.

10 October 2007 Rt Hon David Hanson MP and Ms Ellie Roy
time to reflect upon that when I receive it but I understand it is due for me on 2 November. With regard to the second part of the question, Lord Judd, we have already changed some elements of control following incidents such as the sad deaths of Adam Rickwood and Gareth Myatt. We have already changed and outlawed some elements of control based on assessment following those incidents. Again, with regard to the wider use of restraint, one of the points of reference that I have put into the review I have ordered on the use of restraint is whether or not and what type of policy and practice on use of restraint there is across the juvenile sector as a whole. I would expect that the two chairs of the review will examine current uses of restraint, will examine whether those restraint holds are broadly applicable, will give advice and guidance on those issues, and will, I hope, clarify and seek to put into place good practice as far as we can with regard to the need to have control elements within those centres. So there has been action and as a result of the review, without pre-empting it, there may well be further action in due course dependent on the considerations from my colleagues who will chair that review and the evidence submitted from a range of agencies, not least the families of people who have been subject to restraint currently and in the past.

Lord Plant of Highfield: We are getting a bit pushed for time in terms of the range of questions we want to ask. There are two questions on the Code of Practice which were going to come later but I think it would be appropriate to ask them now.

Q35 Baroness Stern: Thank you very much for reminding us of the Code of Practice which we have seen. The Code of Practice appears to enshrine the fundamental principle that restraint should only be used where there is a specified risk. How are the amended rules compatible with this principle in the Code of Practice? Since the rules have extended the power to use restraint (to ensure good order and discipline, which does not require proof of risk) why have you not amended the code to reflect the new rules?

Ms Roy: I think I have already described in some detail the system by which the decision to use restraint is scrutinised. If it is used for purpose of good order and discipline then I would expect staff in the centre to be able to explain exactly what the rationale for that is. They will need to be able to explain their actions and, if they have used force, that is testable in a court of law as to whether or not it was necessary to use force and whether or not that use of force was proportionate.

Mr Hanson: With regard to the Code of Practice: to be fair to the Youth Justice Board, the amendment has taken place on July 6, the Code of Practice was produced last year. Straight after July 6 I have instigated a review to which the Youth Justice Board will contribute. I believe that at the end of that period we will be able to make recommendations to myself. We have judged during the course of our consideration that the first points you mentioned, the rule change and the operation of restraint, are compatible with legislation currently in place both in Europe and in

Q36 Lord Plant of Highfield: Could I ask a couple of questions which I think are going to be fairly crucial to what might be called the philosophical basis of our report. They are big questions but I think they will not take a lot of answering, in a sense. First of all, how is the use of restraint holds distraction techniques compatible with the UK’s obligations under the UN Convention on the Rights of the Child to ensure that restraint does not “involve the deliberate infliction of pain as a form of control”? Secondly—and this relates to the code particularly—some of our witnesses have suggested that there should be a legal duty on providers of custodial care to inform children and their parents or carers of their restraint policy. That is a fairly easy one to answer. Would you like to start with that?

Mr Hanson: My Lord Chairman, I am happy to reflect on the issue of whether there should be a legal duty. I do not want to pre-empt—and I hope you will accept this in the way in which I put it—some of the outcomes of the inquiry that is going to be on the issue of restraint generally. In the light of the rule change and in the light of the inquests that have occurred, we need to have a general inquiry, and I do not wish, in one sense, to pre-empt any outcome for that. That is certainly something that I will be reflecting upon and undoubtedly it will be put to the joint chairs of the inquiry for them to consider in detail and to make recommendations to myself. We have judged during the course of our consideration that the first points you mentioned, the rule change and the operation of restraint, are compatible with
the United Kingdom, and we will attempt, within that, to ensure that that remains so for the grounds that I have put in terms of our operational guidance to individuals who are working within the system.

Q37 Lord Plant of Highfield: Perhaps, if you do not mind, we can leave the answer to that at that point. I have a couple of questions about the kind of bureaucratic aspects of this. First of all, do the Ministry of Justice and the Youth Justice Board have equal and shared responsibility for ensuring that PCC complies with international human rights standards? Secondly, what is the role of the new Department for Children, Schools and Families, if any, in relation to the detention of children and the use of restraint?

Mr Hanson: There are two aspects to that. First of all, the Ministry of Justice remains responsible in broad terms for the operation of the Youth Justice Board, but now, since 26 June, we have had a shared understanding of policy details with the Department for Children, Schools and Families. There is currently a memorandum of understanding being developed between the Secretary of State for Children, Schools and Families and the Ministry of Justice because we are trying to ensure that we add value to the work of the Youth Justice Board by looking at not just the question of secure training centres but also some of the wider issues about tackling the causes of crime and the cause of social exclusion in the first place. We believe that there will be a role for both departments to look at a range of issues to do with educational opportunities, social exclusion, tackling the causes of crime, as well as having responsibility for policy issues across the board. In terms of accountability to Parliament we have split roles. Individual ministers, myself and Beverley Hughes, will take the lead role in a number of areas dependent on the responsibilities in that area. The memorandum of understanding which we are currently compiling, which we will be publishing shortly, will outline that in some detail. In terms of the management of physical control, I have established a management board, which comprises those bodies, which I will chair, which will look at the operation of physical control in care across the board. The first meeting of that board will be on 5 November. We are intending, pending the results of the investigation that I have established and the review that I have established, to look at a whole range of issues to do with training, support, operation of PCC and making sure that there is a monitoring body across the board looking at those issues. The accountability there rests with myself but obviously in relation to other departments playing a role. I should also mention that the Department of Children, Schools and Families has responsibility for secure children’s homes themselves and Beverley Hughes will be the accountable Minister responsible for that area of work. I am the accountable Minister for STCs.

Q38 Nia Griffith: Minister, we have had some evidence from the NSPCC that, because there is requirement on the secure training centres to meet targets by getting people into educational opportunities, possibly restraint may have been used in order to make young people take part in the education sessions. This, I understand, was from interviews with children during the Carlile inquiry. In making the Service Level Agreement with the secure training centres, is there anything at all in the contract or agreement that refers to restraint or to the importance for an establishment to comply with human rights standards? Would you have an example of anything like that?

Mr Hanson: If there are allegations from any organisation about the improper use of restraint, then I would wish those to go to myself as the Minister and also to go via myself to the Chief Executive of the Youth Justice Board, because it would not be my policy nor indeed that of the chief executive to have restraint techniques used to encourage individuals to participate in educational opportunities. The STC rules themselves are in the contract for the STCs and it is understood that they have to adhere to that contract as well as the Code of Practice. From my perspective, education, training rehabilitation is a key element of the regime in SCs and, indeed, in other establishments managing young people who have committed offences, but the key thing is that that is part of a positive regime, not part of a coercive negative regime. If there are allegations, they have certainly not been put to me to date and I would ask, via the Committee, if the NSPCC do have real examples of that, that they draw them up, submit them, we will have a look at them and, if they prove to be correct, I will take a very serious view of that incident.

Q39 Nia Griffith: Thank you very much. You mentioned earlier about the audit practice. Obviously there is a self-audit first and then presumably that is looked at by your team. What happens then if you do have suspicions that private companies could be overusing restraint?

Mr Hanson: As I have mentioned, the monitoring is undertaken, first of all, by the local centre itself and it will monitor and look at every incident of use of restraint that it undertakes. But the Youth Justice Board, acting on behalf of the secretary of state, does have within each establishment, on a regular basis, monitors who will look at the use of restraint in those centres and will look at particularly the use of restraint where it is an exception to the normal use of restraint. Last year, I think, from memory, there were something like 54 exceptions out of the 3,000 odd uses of restraint. Each of those will then be looked at by the Youth Justice Board, by the chief executive. They will be examined, in terms of practice, with medical, prison and other operatives looking at the use of restraint in those circumstances, and if changes were, indeed, have been made. I receive regular reports of the level of use of restraint, the numbers of exceptions, the institutions where those exceptions have occurred, and if, as indeed there have been
cases where there is concern about the use of restraint in a particular establishment, we will examine that in detail jointly, as the Minister and as the Youth Justice Board, to examine and probe the reasons why. Sometimes that may well be simply down to one individual who has a very disturbed history who has increased dramatically the number of restraints in a particular establishment. We are very keen on monitoring it and I am very keen in keeping an eye not just on the level of restraint but also, crucially, the importance of the severity of the use of that restraint and the difficulties that occur in particular cases.

**Ms Roy:** As we have monitored the use of restraint since February 2006, it is evident from the figures that they are volatile. On a month-by-month basis, in every single place where we have children, across every single sector—so secure children’s homes, STCs and YOIs—you can see a doubling of the figures in terms of the use of restraint. We specifically require the centres, on a monthly basis, to account for why, if restraint has gone up, that has been, and we have our monitoring system and so on. Invariably it is because of particular children; a combination of children; very large numbers of moves into and out of establishments—because children are at their most vulnerable as they come in and before they leave, often because they do not have anywhere to go when they are going out and they get very anxious about that, so that is a really vulnerable time for them, and also because of mental health difficulties and so on. So we can see that and you can track between establishments where we have transferred individuals from one establishment across to another or maybe from an STC to an SCH. You can see that one establishment’s figures go down and another’s goes up. We can see that across the piece. On occasion, however, we have looked at it and through our monitoring we have thought that these numbers have gone up and they have stayed up, or they have been up for a number of months, and we can do one of a number of things. One is that we can ask CSCI to go in and do an unannounced inspection, and that has happened before now. The other is that we can put together a team of our own people and send them in to go through and find out exactly what has happened, to look in detail through the report, to interview children, to interview members of staff, and we have done that at one establishment over the last number of months to find out what was going on there. We are trying to use the data to give us the clue as to where, if we need to dig deeper, that is, in case we are not picking something up on the routine monitoring and so on. We have quite robust processes in place. You cannot ever guarantee perfection in this, and in fact we are keen to carry on improving as much as we can and making it as robust as possible, but that is the way we handle it if we have any concerns.

**Q40 Baroness Stern:** Could I ask you if you would be prepared to tell the Committee when you asked CSCI to make this to make this unannounced inspection, where it was, and when you sent in your special team and where it was?

**Ms Roy:** We can ask CSCI to make an unannounced inspection. I do not have the detail with me as to where they went and when unannounced inspections have taken place, but I can send that through to the Committee afterward. We did go into one establishment earlier this year. In February/March we sent one of our team of our own people in. In fact, we did that twice.

**Q41 Baroness Stern:** Can you tell us where that was or is that confidential.

**Ms Roy:** It is not a secret. Let me just get it right now and make sure I am not making a mistake—because I think I might be having a senior moment here in trying to remember the detail. We went into Medway earlier this year and we also went into Oakhill.

**Baroness Stern:** Thank you.

**Q42 Nia Griffith:** Are you saying that you are confident that your systems are sufficient to make sure a secure training centre does not transgress the Code of Practice just because they want to try to meet targets?

**Ms Roy:** I am as confident as I can be that that is not the case. It would be very difficult for them to do that, given the degree of scrutiny that we put them under. I have to say, they are under much more scrutiny than the secure children’s homes or the YOIs. They are under much more scrutiny. They also have the advocacy service in there. If children want to make a complaint, the independent advocacy service can help them to do that. In fact, we have used the advocacy service just recently to do a survey in one of the centres, and to repeat it to see what the children are saying about their treatment in there and about the place and what needs to be improved, and I have to tell you that it was very informative. It was a really good piece of work and, I think, again, that is something that we will want to replicate elsewhere. We see what we see, we put in all the scrutiny that we can, but we need to listen to what the children are saying.

**Q43 Lord Fraser of Carmyllie:** I think I am pretty sure, shall I say, that you genuinely want to use restraint as a last resort, although there seems to me probably a greater degree of subjectivity than you are all satisfied with, and that is what you are trying to control. As far back as 2003, as I understand it, the National Children’s Bureau was commissioned by the Youth Justice Board to look into the safety and effectiveness of the restraint techniques and it was not terribly comfortable with those. For example, we know that in Adam Rickwood’s suicide note he talks about being “hit” in the nose. Can we be confident that in this review that you are undertaking issues of safety and effectiveness—it is a rather different issue: let us assume we have got to the last resort—the techniques that are being used are both safe and effective?

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4 **Note by witness:** On 1 April 2007, responsibility for inspecting secure training centres passed to Ofsted.
Mr Hanson: The terms of the review, which I hope the Committee has seen, include, for example, the comment that the operational efficacy, safety, including medical safety, ethical validity of restraint methods in juvenile secure settings, including physical control in care, may be examined. That is one of the key items of the review and the recommendations that I am seeking to get and I do want to have a genuine debate on those issues because I do want to get to a situation whereby we have an understanding and a settled will on the scope of potential restraint use, its safety, its usage, and to make sure that we not just do it in secure training centres but also, as the chief executive mentioned earlier, in those centres which currently are not regulated and which do not have the legal force such as secure children’s homes.

Q44 Lord Fraser of Carmyllie: I come from the north of the border and we scarcely use restraint techniques. We do not think they are necessary. Can we expect in that two aspects of this? One is a further restriction on what we would consider or regard as being suitable restraint techniques. And maybe this is a question that you cannot answer, but so far, we have restricted our activity and yours to what happens in the secure training centres but restraint techniques are used on a much broader basis than that, so is that going to be part of that review as well? Mr Hanson: I hope the terms of the review will encompass—and I am quoting from the terms that I have published to Parliament—policy and practice on the use of restraint across a range of juvenile secure settings including Secure Training Centres (STCs), Secure Children’s Homes (SCHs) and Young Offender Institutions (YOIs). I would love to answer the question but I want to try to ensure the review itself is unfettered in its consideration of those matters. I do not want to pre-empt the review, nor give the review a steer. I have not attempted to do that with the joint chairs and I will not, with respect, today.

Q45 Lord Fraser of Carmyllie: I would not in any sense ask you to restrict them in what they do but I do not think a steer would be a bad idea. Possibly there is a big enough steer in that, in that you are asking people to look at it on a broad basis.

Mr Hanson: From my perspective, I want to see as limited a use of the use of restraint as it is practically possible, but I recognise that there are operational areas which we have discussed earlier in the Committee which may involve the necessity for use of restraint. I have asked for that examination across the board, for the types of use of restraint, for the circumstances where it may be used, for the training needs, for the control mechanisms and for the use of consideration where there is currently no legal recognition, such as in secure children’s homes. I am hopeful that that review will produce recommendations which I will have to consider, obviously, and may accept or not accept, but which I hope will generate the debate around the use of restraint in the widest context and answer some of the points that I cannot bring to the Committee today but which I know the Committee is focused on.

Q46 Lord Plant of Highfield: Could I pick up that point. We are going to run into a very acute quorum question in a few minutes of time and we also have to transact another piece of business while we are still quorate. If we have issues, could we take them up with you via letters. Equally, if you want to present further evidence—

Mr Hanson: I am very happy, my Lord Chairman, to do what the Committee wants by writing. Indeed, if the Committee wishes, I am happy, with the chief executive, to subject myself to your will again. Lord Plant of Highfield: Thank you both for a very informative and straightforward account of everything that is going on.
Written evidence

1. Letter to Bridget Prentice MP, Parliamentary Under-Secretary of State, Ministry of Justice

I am writing in my capacity as Chair of the Joint Committee on Human Rights to register my surprise and disappointment at the Government’s decision to extend the range of circumstances in which force can be used in secure training centres.

As I am sure you are aware, my Committee has long taken an interest in the use of physical restraint on children in secure training centres. Our predecessor Committee published its Report on the UN Convention on the Rights of the Child in June 2003, in which it expressed its view that the degree of physical restraint experienced by children in detention contravened the UN Convention, and its Report on Deaths in Custody in December 2004. The Committee has received updates from Government about the frequency of the use of physical restraint in secure training centres on three occasions since, the most recent being received from the Home Office in February 2007. I regret, therefore, that you should seek to make such a significant and controversial extension of the circumstances in which restraint can be used in secure training centres without at least informing the Committee beforehand.

I am also very disappointed that the explanatory memorandum which accompanies the statutory instrument contains practically no reference to human rights, save for a bland assertion that because the instrument does not amend primary legislation a statement of compatibility with the European Convention on Human Rights is not required.

I would be grateful if you could provide the Committee with an explanation as to how the Secure Training Centres (Amendment) Rules are compatible with the European Convention, particularly Articles 2, 3 and 8.

The UK is a signatory to the UN Convention on the Rights of the Child, Article 3 of which states:

> No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

> Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age.

I would be grateful if you could explain why you think that the Secure Training Centres (Amendment) Rules are fully in accordance with the provisions of the UN Convention.

I also wish to draw your attention to the conclusion of the Joint Committee on Human Rights in paragraph 234 of its 2004–05 Report on Deaths in Custody:

> Human rights standards and the principle of proportionality require that any form of physical restraint should be a last resort. Staff should therefore be equipped with a range of skills to deal with and de-escalate potentially violent situations, as well as a range of restraint techniques that will allow for use of the minimum level of force possible. Restraint in detention should be a rare event, and should never be used as a matter of routine.

In its reply to the Report, the Government said it agreed with “the fundamental principle that use of restraint in detention must be a last resort and this is made clear in its guidance to staff in all detention areas.”

I would be grateful if you could:

— provide the Committee with a description of the precise techniques and methods of physical restraint used in secure training centres, and any material used to train staff in the use of such techniques and methods;

— confirm that the Government remains of the view that the use of restraint in detention is a last resort;

— explain the basis for your belief that the change to the rules will not lead to increased use of restraint in secure training centres, and how the Government can ensure that this does not happen in practice;

— explain why you do not anticipate that a refusal to comply with an instruction alone would constitute a breach of good order and discipline and thus lead to restraint and how the Government can ensure that this is not how the new rules will be interpreted in practice;

— explain the relationship between the new rules and para 10.4 of the YJB Code of Practice on Behaviour Management, that “restrictive physical interventions must not be used as a punishment, or merely to secure compliance with staff instructions”; and

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3. Written ministerial statement of 21 June.
4. Ibid.
— indicate whether, and if so how, the Code will be revised to take account of the new rules.

I would be grateful if you could reply by Friday 6 July.

25 June 2007

2. Letter from The Rt Hon David Hanson MP, Minister of State, Ministry of Justice

THE SECURE TRAINING CENTRE (AMENDMENT) RULES 2007

Thank you for your letter of 25 June, in which you ask for further information about certain aspects of the Secure Training Centre (Amendment) Rules (the 2007 Rules), which were laid before Parliament on 13 June.

As you will know, evidence at the recent inquest into the death of Adam Rickwood pointed to a lack of clarity in the law on the use of physical restraint. Section 9 of the Criminal Justice and Public Order Act 1994 (the 1994 Act) places certain duties on custody officers at a contracted-out secure training centre, including the duty to ensure good order and discipline. It also specifies that the powers that arise by virtue of those duties shall include power to use reasonable force where necessary. Section 9 is the legal basis for the use of reasonable force in secure training centres. We have not amended it and we do not plan to do so. There was however a lack of clarity about the relationship between section 9 and Rule 38 of the Secure Centre Rules 1998 (the 1998 Rules), which sets out the purposes for which physical restraint may be used. In consequence, the Coroner at the inquest into Adam’s death recommended urgent action to clarify the law. We acted quickly in response to his recommendation, so that all stakeholders could be clear about the law on the use of restraint.

We are quite confident that the 2007 Rules accord with both the ECHR and the UN Convention on the Rights of the Child. (If they were not, then the implications would extend well beyond secure training centres. A member of staff at a school, for example, may use reasonable force to prevent a pupil from engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils (Education Act 1996, section 550A). The system of physical restraint approved for use in secure training centres was expressly designed to avoid inflicting pain wherever possible. It involves a range of holds that restrict mobility.

The holds are graded according to the level of resistance the trainee is presenting. Level 1 holds are made by a single custody officer; level 2 by two officers; and level 3 by three officers. The purpose of these holds is to safeguard both the young person being restrained and anyone he or she might injure—notably other young people and members of staff at the centre. In some circumstances, however, it is not possible to apply a hold immediately because, for example, the trainee has seized another young person and refuses to release him or her. Before a hold can be applied, it is first necessary to disengage the trainee and for this three distraction techniques are available. All the techniques—the holds and the distraction techniques are described in the training manual. The part of the manual that describes the holds is not publicly available, as dissemination of it could affect security at secure training centres.

I can certainly confirm that restraint may only be used as a last resort. That is explicitly stated in the Youth Justice Board’s code of practice Managing Children and Young People’s Behaviour in the Secure Estate (February 2006). It is also the clear position under Rule 38 (as amended by the 2007 Rules), which says physical restraint may only be used where no alternative is available. The 2007 Rules do not require any change to the code of practice and the Youth Justice Board is not planning to change it.

You ask why we do not anticipate that a refusal to comply with an instruction alone would constitute a breach of good order and discipline and thus lead to restraint. Section 9 of the 1994 Act—the key provision—specifies that reasonable force may be used to ensure good order and discipline where necessary. That is a crucial qualification and it is mirrored in Rule 38. Rule 38 permits the use of physical restraint for the purpose of ensuring good order and discipline only where no alternative method of doing so is available. The clear meaning of both provisions is that all other feasible approaches must first be attempted. That is entirely consistent with paragraph 10.4 of the code of practice, which states that restrictive physical interventions must not be used as a punishment, or merely to secure compliance with staff instructions. The statutory monitors are responsible for making sure that physical restraint is only applied where necessary.

The Rules have been amended to clarify the law. Our policy has always been to minimise the use of restraint. That is evident from the principles set out in section 10 of the Youth Justice Board’s code of practice and from the measures the Board has been taking to ensure that custodial establishments comply with the code. Immediately after the introduction of the code, establishments were required to conduct an assessment of compliance with it, which was audited by the Board. Where necessary, establishments were then required to draw up an action plan to achieve full compliance. The Board is planning a further assessment and audit later this year. The Board collects monthly statistics on use of physical restraint in all under-18 custodial establishments and is able to identify trends and any areas of concern. An improved system of data collection was introduced in April this year.
As with most if not all rights, there is an important balance to be struck between competing rights. It is essential to have proper regard to the rights of other trainees and of members of staff, as well as of the young person being restrained, and to weigh the risks attaching to failure to restrain in situations where restraint is necessary. A secure facility cannot be run safely if aggressive and dangerous behaviour is allowed to go unchecked, or if good order is compromised to the extent that staff lose effective control. The behaviour of young people in custody is frequently challenging and sometimes dangerous. Physical restraint must be available—in the last resort—so that everyone in the secure facility can be kept as safe as possible.

10 July 2007

3. Letter to the Rt Hon David Hanson MP, Minister of State, Ministry of Justice

USE OF RESTRAINT IN SECURE TRAINING CENTRES

As Chair of the Joint Committee on Human Rights I corresponded with Patricia Scotland on this topic in 2005–06. I was grateful for the undertaking in Patricia’s letter to me of 14 February 2006, in reply to a request in mine of 26 January 2006, to place in the Libraries of each House regular reports on staffing, use of restraints and non-accidental injuries in secure training centres.

Patricia later replied on 8 January 2007 to a Question in the House of Lords by Baroness Stem, a member of the JCHR, that information covering the period July to September 2006 would be placed in the Library. But Sally Keeble MP found that information requested by the JCHR did not become available until 11 July 2007 (her speech in the House of Commons on 12 July on the death following restraint in a secure training centre of Gareth Myatt). I understand that reports covering the last three quarters of 2006 have now been placed in the Library.

It is disappointing that fulfilment of Patricia’s undertaking seems to have been neither timely nor systematic. I would be grateful for your confirmation that the quarterly reports I requested will from now on be placed promptly and regularly in the Libraries of both Houses, and that those for the first two quarters of 2007 will be made available very soon.

I would be grateful if you would reply by 31 July.

I am sending a copy of this letter to Sally Keeble MP.

23 July 2007

4. Letter from the Rt Hon David Hanson MP, Minister of State, Ministry of Justice

USE OF RESTRAINT IN SECURE TRAINING CENTRES

Thank you for your letter of 23 July.

I was sorry to hear that Sally Keeble MP had had difficulties obtaining quarterly statistics on use of restraint in secure training centres from the Library. We have been in touch with the Library and they have been able to locate two of the three sets of figures originally deposited. They are at MGP-06/2541 and MGP-06/2991. It is not clear what has happened to the third set (covering October to December 2006), which were sent in May. It may be that they have been recorded on the database under a less obvious keyword. When we learned of Sally’s difficulty, we re-sent all three sets and they can be found at MGP-07/2412.

We will place further statistics in the Libraries once they are available.

I am copying my reply to Sally Keeble MP.

4 August 2007

5. Memorandum from the Ministry of Justice

SECURE TRAINING CENTRES AND THE SECURE TRAINING CENTRE RULES

1. Secure training centres are provided for by the Criminal Justice and Public Order Act 1994. Section 5 deals with provision of centres, section 6 with their management (including power for the Secretary of State to make Secure Training Centre Rules under the Prison Act 1952) and section 7 enables the Secretary of State to enter into contracts for their provision and/or running by private operators. Section 8 describes the officers a contracted-out centre is to have (a Director, who takes the place of the Governor of a non-contracted-out centre, a Monitor, who reports to the Secretary of State and custody officers who are authorised by the Secretary of State to perform custodial duties.
2. The relevant extracts from the primary and secondary legislation relating to the use of force and physical restraint is at Appendix A. Section 9 describes the powers and duties of custody officers at contracted-out centres. Subsections (1) and (2) relate to powers to search trainees and visitors. Subsection (3) lists the duties of officers as respects offenders detained in the centre. These are:

- to prevent their escape from lawful custody;
- to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
- to ensure good order and discipline on their part; and
- to attend to their wellbeing.

3. Subsection (4) provides that the powers of search and the powers arising by virtue of the duties in subsection (3) shall include power to use reasonable force where necessary.

4. The Secure Training Centre Rules were made in 1998, in the year that the first centre opened (Medway, in Rochester, Kent). Like the three other centres that opened in 1999 (Hassockfield in County Durham and Rainsbrook near Rugby) and 2004 (Oakhill in Milton Keynes) it was contracted out under the terms of the Private Finance Initiative.

5. The Secure Training Centre Rules 1998 include requirements in relation to the use of force and physical restraint: Rule 38 specifies the purposes for which physical restraint may be used. In its original (1998) form, these were to prevent a trainee from:

- escaping from custody;
- injuring himself or others;
- damaging property; or
- inciting another trainee to injure himself or others or to damage property.

6. A comparison of section 9 of the Criminal Justice and Public Order Act 1994 and Rule 38 of the Secure Training Centre Rules in its original form raises questions, notably about the relationship between “force” and “physical restraint”. Is “force” synonymous with “physical restraint” and, if not, how do they differ?

7. This lack of clarity was an issue at the inquest into the death, in 2004, of Adam Rickwood at Hassockfield Secure Training Centre. Some hours before his death, Adam had been restrained by custody officers at the centre. The inquest jury found that this had not been a contributory factor in Adam’s death, but during the hearing of evidence there was some legal argument as to the statutory authority for the officers’ actions. Counsel for Serco (the Hassockfield contractors) pointed to section 9 of the Criminal Justice and Public Order Act 1994 as giving that authority; Counsel for Adam’s family argued that only those purposes listed in section 38 applied, and that consequently there was no statutory authority to use physical restraint to ensure good order and discipline. The Coroner decided that it was not necessary, for the purposes of the inquest, to reach a view on the precise position, but recommended urgent action to clarify the inter-relationship between section 9 and Rule 38.

THE SECURE TRAINING CENTRE (AMENDMENT) RULES 2007

8. In response to the Coroner’s recommendation, the Secretary of State for Justice decided to amend the Secure Training Centre Rules, so that the purpose of ensuring good order and discipline was incorporated into Rule 38. (The Secure Training Centre (Amendment) Rules (the Amendment Rules) also allow a trainee to be removed from association for the same purpose.)

9. The Amendment Rules were laid before Parliament on 13 June and came into force on 6 July. They are now the subject of an action for judicial review (R (on the application of AC) v Secretary of State for Justice). The claimant has raised a number of issues concerning the Amendment Rules and the use of restraint generally in secure training centres. In particular it is suggested that wider consultation should have been conducted before the Amendment Rules were made; and that the term “good order and discipline” is not sufficiently precise. These are matters for the Administrative Court to resolve.

10. The Committee is aware of David Hanson’s letter of 10 July to Andrew Dismore about the Secure Training Centre (Amendment) Rules, including the question of compatibility with the European Convention on Human Rights.

JOINT REVIEW OF RESTRAINT

11. On 12 July David Hanson announced the Government’s intention to conduct a review of the use of physical restraint in the under-18 secure estate. Its broad terms of reference were published on 26 July (see Appendix B).

12. The review will be independently chaired and will report, within six months of the Chair’s appointment, jointly to the Ministry of Justice and to the Department for Children, Schools and Families. The process is underway to appoint a Chair. For such an important and sensitive review, it is critical that
we appoint someone with the necessary skills and experience and who will inspire public confidence. We will announce the name of that person as soon as possible. Once appointed, the Chair will consider whether any further issues should be brought within the scope of the review.

13. There will be full consultation on the substance of the review and the consultation process will be announced in due course.

September 2007

APPENDIX A

LEGISLATION RELATING TO USE OF PHYSICAL RERAINT IN SECURE TRAINING CENTRES

Criminal Justice and Public Order Act 1994

9 Powers and duties of custody officers employed at contracted out secure training centres

(1) A custody officer performing custodial duties at a contracted out secure training centre shall have the following powers, namely:
   (a) to search in accordance with secure training centre rules any offender who is detained in the secure training centre; and
   (b) to search any other person who is in or who is seeking to enter the secure training centre, and any article in the possession of such a person.

(2) The powers conferred by subsection (1)(b) above to search a person shall not be construed as authorising a custody officer to require a person to remove any of his clothing other than an outer coat, headgear, jacket or gloves.

(3) A custody officer performing custodial duties at a contracted out secure training centre shall have the following duties as respects offenders detained in the secure training centre, namely:
   (a) to prevent their escape from lawful custody;
   (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
   (c) to ensure good order and discipline on their part; and
   (d) to attend to their well-being.

(4) The powers conferred by subsection (1) above, and the powers arising by virtue of subsection (3) above, shall include power to use reasonable force where necessary.

Secure Training Centre Rules 1998 (as amended by Secure Training Centre (Amendment) Rules 2007)

38 Physical restraint

(1) No trainee shall be physically restrained save where necessary [for the purpose of ensuring good order and discipline or] for the purpose of preventing him from:
   (a) escaping from custody;
   (b) injuring himself or others;
   (c) damaging property; or
   (d) inciting another trainee to do anything specified in paragraph (b) or (c) above, and then only where no alternative method of [ensuring good order and discipline or of] preventing the event specified in any of paragraphs (a) to (d) above is available.

(2) No trainee shall be physically restrained under this rule except in accordance with methods approved by the Secretary of State and by an officer who has undergone a course of training which is so approved.

(3) Particulars of every occasion on which a trainee is physically restrained under this rule shall be recorded within 12 hours of its occurrence.

APPENDIX B

REVIEW OF THE USE OF RESTRAINT IN JUVENILE SECURE SETTINGS

The broad terms of reference for the review are as follows:

— It will encompass policy and practice on the use of restraint across a range of juvenile secure settings including Secure Training Centres (STC), Secure Children’s Homes (SCH) and Young Offender Institutions (YOIs).
It will review and make recommendations to Ministers upon:

— The operational efficacy, safety, (including medical safety), and ethical validity of restraint methods, in juvenile secure settings, including Physical Control in Care (PCC)—the system of restraint used only in secure training Centres—and the circumstances in which they may be used.

— The system of training provided to staff using restraint in juvenile secure settings, including how such training is monitored, reviewed and accredited.

— The arrangements for cross-departmental knowledge-sharing on use of restraint and behaviour management across a range of juvenile secure settings including STCs, SCHs and YOIs.

— The respective responsibilities of the Ministry of Justice, the Department for Children, Schools and Families, the Youth Justice Board, Her Majesty’s Prison Service and individual providers of secure children’s homes and other relevant institutions in relation to the safety and effectiveness of restraint including clarification of the approval methods for restraint techniques.

— The responsibilities of Local Safeguarding Children Boards in relation to the safety of restraint in their area.

— Whether the arrangements in place to record and monitor the use of restraint and the arrangements for sharing and analysis of information relating to deaths, injuries and warning signs exhibited following restraints, are adequate in all juvenile secure settings.

— The review will be able to call for evidence from any interested party to assist in the compilation of recommendations to Ministers.

The review will report to Ministers within six months of the appointment of the Chair.

6. Letter from the Rt Hon David Hanson MP, Minister of State, Ministry of Justice

THE USE OF RESTRAINT IN SECURE TRAINING CENTRES

I was glad to have the opportunity on 10 October, together with Ellie Roy, the Youth Justice Board’s Chief Executive, to respond to the Committee’s questions on the use of restraint in secure training centres. I undertook, if possible, to provide additional information on two subjects.

You suggested it might be helpful to provide a note as to whether there was any consideration in 1998 of the omission from the Secure Training Centre Rules of reference to good order and discipline. I am afraid that our research into this question have not revealed any papers that shed light on the matter.

Baroness Stern asked for details of unannounced inspections of secure training centres by the Commission for Social Care Inspection. Unannounced inspections took place as follows:

<table>
<thead>
<tr>
<th>Centre</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hassockfield</td>
<td>17–18 August 2004</td>
</tr>
<tr>
<td></td>
<td>4 October 2004</td>
</tr>
<tr>
<td></td>
<td>27–28 February 2007</td>
</tr>
<tr>
<td>Medway</td>
<td>13–14 December 2006</td>
</tr>
<tr>
<td>Oakhill</td>
<td>28–29 November 2005</td>
</tr>
<tr>
<td></td>
<td>17–18 January 2007</td>
</tr>
<tr>
<td></td>
<td>24–25 April 2007</td>
</tr>
<tr>
<td>Rainsbrook</td>
<td>4–5 May 2004,</td>
</tr>
<tr>
<td></td>
<td>15–16 August 2006</td>
</tr>
</tbody>
</table>

(From 1 April 2007, responsibility for inspecting secure training centres passed to the expanded Ofsted.)

I would also like to take this opportunity to comment briefly on two points raised by Dr Harris. He said, in relation to Question 17, that “in our evidence we have had the Youth Justice Board saying that the change was required because [the Secure Training Centre Rules] were incompatible [with section 9 of the Criminal Justice and Public Order Act 1994]”. I take this to be a reference to paragraphs 1.44 and 1.45 of the memorandum of evidence submitted to the Committee by the Board on 24 September. I understand those paragraphs to mean that the Board’s reason for supporting the proposed change was that the Coroner at the inquest into the death of Adam Rickwood had requested a clarification of the law; and the Board has confirmed that that was their intention.

Dr Harris also said, in relation to Question 18, that he understood the coroner had requested clarification of the law to prevent future deaths in custody. I agree that it is possible to read the coroner’s letter in that way—he says in his first paragraph that his purpose is to “report to the interested parties what action should be taken to possibly prevent the recurrence of similar fatalities in future”. However, in relation to his specific recommendation on the clarification of the law, he said this was necessary “to avoid any confusion whatever. It must be seen as essential that there must be no ambiguity in anyone’s mind, young person, staff, management or those in the YJB or indeed Government as to when the use of restraint or force to maintain good order and discipline or for compliance reasons is authorised”. He does not say that this is to prevent
fatalities similar to Adam Rickwood’s. The key point is that the jury found that restraint had not been a
causative factor in Adam’s death. It therefore seems unlikely that this particular recommendation was made
to prevent similar fatalities.

David Hanson MP
Minister of State
23 October 2007

7. Further letter to the Rt Hon David Hanson MP, Minister of State, Ministry of Justice

Thank you for giving evidence to the JCHR on 10 October 2007 in our inquiry into the use of restraint
in secure training centres and for your letter of 23 October 2007. I am writing to follow up on a number of
issues and would be very grateful if you could answer the questions below.

Physical Control in Care (PCC) Manual

In your evidence, you indicated (Qs 3–7) that the manual on PCC should not be available to the public.
You agreed that you would reflect on whether you would be prepared to provide us with a copy of the
manual.

Q1. Will you provide a copy of the PCC Manual to the Committee?
Q2. Does the YJB object to the PCC manual being made publicly available?
Q3. Will a copy of the manual be provided to the independent review team?
Q4. Are all staff who use PCC provided with a copy of the PCC Manual, and if not, why not?

PCC in Practice

Ms Roy suggested that the Committee may wish to see a demonstration of the PCC techniques (Q 7). It
would be of greater assistance to the Committee to see real examples of the use of PCC. We understand that
where a restraint is planned, the restraint should be videoed.

Q5. By way of example of the use of PCC, will you provide us with copies of recent video footage where
restraints have taken place and distraction techniques have been used?

Having commented on the death of Gareth Myatt at Rainsbrook and the subsequent withdrawal of the
seated double embrace, one STC operator stated in their evidence to us that they “still have significant
concerns about the safety of the PCC both for young people and the sta. . . it is sometimes not possible to put
on PCC holds. It is also difficult to safely apply the head support.”

Q6. What steps do you take to listen and respond to concerns expressed by frontline sta
and establishments about the operation of PCC in practice?

Update on Developments

In your evidence you explained that you have set up a new Committee which will meet for the first time
on 5 November, “which will comprise of organisations involved in the use of the techniques but also
organisations involved in the scrutiny of techniques, such as Ofsted” (Qs 7 and 37).

Q7. We would be grateful to be kept informed of the outcome of these Committee meetings on an
ongoing basis.

You noted that a memorandum of understanding is currently being developed between the Ministry of
Justice and the Department for Children, Schools and Families (Q 37).

Q8. Please provide us with a copy of the memorandum of understanding, once it has been agreed.

You told the Committee that you are expecting to review evidence from the Medical Committee on 2
November and would then “take some time to reflect upon that” (Q 34).

Q9. Please provide us with a copy of the Medical Committee’s report. We would be grateful to be kept
informed of your views on the steps that should be taken in the light of that report.

You explained that the Secretary of State for Justice will be responding to the Coroner in the Adam
Rickwood case “very shortly”.

Q10. Please provide the Committee with a copy of the Coroner’s Rule 43 letter to the Secretary of State
for Justice and a copy of the Secretary of State’s reply.
GOOD ORDER AND DISCIPLINE

In your evidence, you described the monitoring that takes place following the use of restraint and provided some statistics as to the number of cases requiring a detailed report to be made (Qs 26–7).

Q11. In monitoring the use of restraint, what specific factors will the YJB Monitor, the STC Director, the YJB or the Ministry of Justice consider in order to determine whether restraint was used (1) as a matter of last resort and (2) where all other options have been exhausted?

HUMAN RIGHTS FRAMEWORK

The UN Committee on the Rights of the Child’s General Comment No 8 explains that States must ensure that any restraint methods must “not involve the deliberate infliction of pain as a form of control” (para. 15). Ms Roy stated in evidence that the distraction techniques involve the infliction of a “very brief burst of pain” (Q 2).

Q12. Given the evidence that the Committee heard about the use of pain on children and young people, how is the use of distraction techniques compatible with the UK’s obligations to ensure that restraint does “not involve the deliberate infliction of pain as a form of control”?

Q13. How does the Government square its international human rights obligations to prohibit and prevent violence in the treatment of children in conflict with the law with the use of force and restraint on children in detention?

In its evidence to the Committee, the Commission for Racial Equality state:

“the amendment to the STC Rules legitimises the use of violence against vulnerable children who should be regarded as children first and offenders second. The use of violence to ensure good order and discipline will simply perpetuate the view that violence, in whatever form, is acceptable.”

Q14. Is the Government not concerned that state sanctioned violence against children will be counter-productive?

We note reports last week that the Prison Officers’ Association are calling for their officers to be able to carry and use extendable batons in Young Offender Institutions. This raises many of the same human rights concerns as those the Committee has expressed over the use of restraint on children. We also note the Interim Chair of the Youth Justice Board’s view that there is no evidence that using batons on children will protect staff from assault and that a greater focus should be placed on staff training to manage difficult behaviour and de-escalate situations.

Q15. Please explain how the possible use of extendable batons on children can be permissible when set against the Government’s obligations not to subject children to torture or inhuman or degrading treatment or punishment?

Q16. Will this proposal be considered as part of the review of restraint techniques?

STAFF AWARENESS AND TRAINING

You frequently confirmed in your evidence that the use of restraint should be an action of last resort. You also confirmed that the Code of Practice would not be amended at present. The Chief Executive of the Youth Justice Board confirmed that, in the meantime, she had written to STCs to explain the effect of the Amendment Rules.

In Ms Roy’s evidence, she referred to her expectation that staff should be able to explain the rationale for any action taken for the purpose of good order and discipline: “they will need to be able to explain their actions and, if they have used force, that is testable in a court of law as to whether or not it was necessary to use force and whether or not that use of force was proportionate” (Q35).

Q17. Beyond the Chief Executive’s letter to STCs, what have you done to ensure that STCs and their staff fully understand the current circumstances in which young people may be lawfully restrained?

Q18. What, if any, other guidance is provided to staff to enable them to assess, in advance, whether or not the force they intend to use is proportionate?

According to evidence that we have received, all custody staff must undertake a training course which must include training on physical restraint by accredited Home Office instructors. Refresher physical restraint must be given at least annually by accredited instructors. Training is provided locally by accredited PCC Instructors who themselves receive annual refresher training by the Prison Service. The Coroner who conducted the inquest into the death of Gareth Myatt recommended that the Ministry of Justice and the Youth Justice Board consider teaching PCC at national level by national instructors or, as a bare minimum, there should be nationally based supervision and inspection of local teaching by the Ministry of Justice (Coroner’s letter to the Secretary of State for Justice, 18 July 2007, p 11).
Q19. Does the Ministry intend to follow the Coroner’s recommendation?

In their evidence to the Committee, the Youth Justice Board advocates the use of behaviour management strategies by staff to minimise the circumstances where restraint is unavoidable. The YJB says that they are piloting therapeutic crisis intervention which is designed to reduce the need to rely on restraint.

Q20. What has been learned from the pilot? Will the results of the pilot be made public? Is it intended that the use of therapeutic crisis intervention will become widespread within STCs?

**Monitoring and Reporting**

The Coroner investigating Gareth Myatt’s death found that restraint was used as a “default” system (letter to Secretary of State for Justice, 18 July 2007, p. 10). You and Ms Roy provided some evidence of the ways in which restraints are monitored, focussing particularly on the role of YJB Monitors.

Q21. What steps are taken, and by whom, to ensure that restraint is not used too frequently or unlawfully?

Q22. When restraint is used, what steps must an STC take to ensure that it learns any lessons?

Q23. What training do YJB Monitors receive on restraint techniques? Who provides it? What refresher or follow-up training is provided?

Q24. How many STC officers (by year and establishment) have been (1) investigated or (2) disciplined over their misuse of restraint?

You also explained that the STC Rules are in the contract with STCs and they have to adhere to the contract and Code of Practice.

Q25. Please provide us with a copy of a standard form contract with an STC.

Ms Roy explained that CSCI had made an unannounced inspection at one STC (Q 40). In your letter to the Committee, you list the unannounced inspections which have been made by CSCI since August 2004, the most recent being Hassockfield (February 2007) and Oakhill (January and April 2007).

Q26. In relation to the inspections of Hassockfield and Oakhill, what was the outcome of the unannounced inspections? Have the Ministry of Justice, the YJB or the STC concerned taken any steps in the light of those inspections?

Ms Roy told the Committee that the YJB went into Medway and Oakhill STCs in 2007.

Q27. What was the outcome of the YJB’s inspection of these two STCs?

In his letter to the Secretary of State, the Coroner into Gareth Myatt’s death recommended that “there should be an immediate and thorough review by the Ministry of Justice of its own system of monitoring the YJB. The Ministry must satisfy itself that the YJB adequately fulfils its duty to provide a safe environment at STCs. The Ministry of Justice will need to devise whereby it can satisfy itself that its own monitoring of the YJB is satisfactory. Only by such means can the Ministry properly say whether or not the YJB is, in fact, providing the safest possible environment for trainees and therefore whether or not the YJB is, with regard to the safety of trainees, ‘fit for purpose’”. (Letter to Secretary of State for Justice, 18 July 2007, pp.11-12)

Q28. Beyond the joint Governmental review, what steps has the Government taken to ensure that the Youth Justice Board adequately fulfils its duty to provide a safe environment at STCs? What further steps are now being taken or are planned?

**Consultation**

In my letter to you of 25 June 2007, I expressed the Committee’s concern that it had not been informed of the Government’s intention to amend the Rules. You did not reply to this concern in your letter of 10 July 2007. We have also received evidence from other organisations, both stakeholders and statutory bodies, expressing similar concerns about the lack of consultation.

Q29. Given the Committee’s past interest in the issue of deaths in custody and detention more generally, why was it not informed before the Rules were amended or sent a copy of the draft Rules?

Q30. Why were the Children’s Commissioner and the Ministry of Justice’s own panel of experts (the PCC Review Panel) not consulted before the Rules were amended? In addition, what prevented wider public consultation with key stakeholders on the Rules?

I am copying this letter to the Chief Executive of the Youth Justice Board.

I would be grateful if you could reply by 12 November 2007.

29 October 2007
8. Letter from the Rt Hon David Hanson MP, Minister of State, Ministry of Justice

Thank you for your letter of 29 October, requesting further information about the use of restraint in Secure Training Centres. I am sorry for the delay in responding. The answers to your questions are in the appendix to this letter.

I also enclose, as requested:

— a copy of the Rule 43 letter from the Coroner who presided at the inquest into the death of Adam Rickwood.

27 November 2007

APPENDIX

USE OF RESTRAINT IN SECURE TRAINING CENTRES

Will you provide a copy of the PCC Manual to the Committee?

Under the Freedom of Information Act we have placed the general part of the Manual in the public domain. This does not include the section describing the holds. I will arrange for a copy of the former to be placed in the Libraries.

Does the YJB object to the PCC Manual being made publicly available?

The PCC Manual is an instructor’s manual, produced by the Prison Service. It is designed to be used by those training custody officers in the use of PCC. The Prison Service considers that placing descriptions of the individual techniques in the public domain might lead to their being attempted by people who had not received the necessary training. That could place people at risk.

During the hearing of oral evidence, Dr Harris made the point that other potentially dangerous information, for example about surgical techniques, was in the public domain. However, that may be because of the practical difficulty or impossibility of limiting its availability, rather than the desirability of its being widely available.

Will a copy of the Manual be provided to the independent review team?

An unredacted copy of Manual has been provided to the review team.

Are all staff who use PCC provided with a copy of the PCC Manual, and if not, why not?

The PCC Manual is an instructors’ manual and is not made generally available. We are currently reviewing what written guidance is needed by custody officers.

By way of example of the use of PCC, will you provide us with copies of recent video footage where restraints have taken place and distraction techniques have been used?

Neither the Ministry of Justice nor the Youth Justice Board has this footage. We will pass your request to the secure training centre operators.

What steps do you take to listen and respond to concerns expressed by frontline staff and establishments about the operation of PCC in practice?

The Youth Justice Board has a system of exception reporting, under which STCs (and other under-18 custodial establishments) are to provide details of any incidents that cause concern. Where appropriate, the Youth Justice Board refers these concerns to the Prison Service Training Centre (which is responsible for devising the techniques and for training instructors). The Board has also established a Forum of Secure Training Centre Directors. This provides a regular opportunity to discuss restraint issues (among other matters).

We would be grateful to be kept informed of the outcome of the meetings of the PCC Management Board on an ongoing basis.

We shall be happy to provide the Committee, in confidence, with the minutes of the Board’s meetings. As they are an internal document and form part of the policy-making process, we should be grateful if the Committee would not pass them to any third party.

Please provide us with a copy of the memorandum of understanding between DCSF and the MoJ, once it has been agreed.
Following further discussions between the two Departments, it was decided to establish a new joint unit (known as the Joint Youth Justice Unit) to advise Ministers from both Departments on youth justice issues. The new unit was launched on 13 November. It merges the responsibilities of the former Ministry of Justice Youth Justice and Children Unit and those of the Young Offender Education Team of the Offenders Learning and Skills Unit of the former DFES. The unit has two aims:

— to contribute to the protection of the public by developing policy and law in relation to children and young people who offend and are at risk of offending; and,
— to ensure that children and young people in contact with the criminal justice system achieve all five outcomes of Every Child Matters ie to be healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being.

The Unit also sponsors the Youth Justice Board for England and Wales—the executive non-departmental public body that oversees the youth justice system. It will oversee early intervention and prevention programmes delivered via the Youth Justice Board through Youth Offending Teams and have responsibility for policy in relation to children and young people in the out-of-court system, those on community sentences and in custody. It will also oversee policy on resettlement and reducing youth re-offending.

Please provide us with a copy of the Medical Committee's report. We would be grateful to be kept informed of your views on the steps that should be taken in the light of that report.

The initial meeting of the Medical Review Panel took place on 2 November. It plans to meet again early in the new year, for further discussion before finalising its recommendations to the two Departments. We will publish the Panel’s recommendations and the Government’s response in due course.

Please provide the Committee with a copy of the Coroner’s Rule 43 letter to the Secretary of State for Justice [in the Adam Rickwood case] and a copy of the Secretary of State’s reply.

A copy of the Coroner’s letter is attached. We plan to give a full response to the Coroner’s recommendations, and those of the Coroner who presided at the Gareth Myatt inquest, and hope to do so in the near future.

*In monitoring the use of restraint, what specific factors will the YJB Monitor, the Secure Training Centre Director, the YJB or the Ministry of Justice consider in order to determine whether restraint was used (1) as a matter of last resort and (2) whether all other options have been exhausted?*

The Monitor and the STC Director will consider what other options (if any) were attempted, and whether options that were not attempted might have been attempted with any realistic prospect of success. If the matter is referred to the Youth Justice Board, it will also consider those questions.

*Given the evidence that the Committee heard about the use of pain on children and young people, how is the use of distraction techniques compatible with the UK’s obligations to ensure that restraint does ‘not involve the deliberate infliction of pain as a form of control’?*

PCC is designed to avoid, as far as possible, the use of techniques that involve pain. Distraction techniques are for use in situations where the risk involved in not using such a technique outweighs the undesirability of using it. The Government notes the opinion of the UN Committee, quoted above. However, the Government’s obligations under the Convention are determined solely by the requirements of the Convention.

*How does the Government square its international human rights obligations to prohibit and prevent violence in the treatment of children in conflict with the law with the use of force and restraint on children in detention?*

There is a critical distinction between, on the one hand, use of force or restraint to prevent harm and to maintain good order and the safe operation of an establishment, and, on the other, violence, which is the unreasonable, unjustified and unlawful use of force. The Government has a clear obligation to provide for restraint to be used where the consequence of not using it would be to put people at risk.

*Is the Government not concerned that state-sanctioned violence against children would be counter-productive?*

The Government does not sanction violence against children.

*Please explain how the possible use of extendable batons on children can be permissible when set against the Government’s obligations not to subject children to torture or inhuman or degrading treatment or punishment?*

Batons are not currently deployed to staff working in young people’s establishments. The Prison Officers Association has expressed the view that violence and disruption in the young people’s estate has reached such a level that the existing means of restraint are no longer adequate and that both staff and young people are at risk. We have a duty to examine the evidence for this and that is what we have begun to do. A review
by the Prison Service, which began in October, is looking at policy in women's establishments and open establishments and in relation to healthcare officers, as well as in under-18 young offender institutions. It is due to report on the under-18 issue by the end of January. The review will assess all the relevant risks. Until all views and issues have been considered and the review completed, it would be wrong to speculate as to its conclusions. The review will of course take full account of our legal obligations, including those under the ECHR.

Will this proposal be considered as part of the review of restraint techniques?

The Prison Service is reviewing the evidence on the carrying of batons in juvenile establishments and all other areas of the Prison Service estate where they are not currently carried. The Secretaries of State for Justice and for Children, Schools and Families have asked the independent chairs of the joint review of restraint to take account of evidence from the Prison Service review on batons and reflect it in their recommendations.

Beyond the Chief Executive's letter to STCs, what have you done to ensure that STCs and their staff fully understand the current circumstances in which young people may be lawfully restrained?

The PCC Manual has been revised to take account of the Amendment Rules. In her letter of 11 July to STC Directors, the Chief Executive said: “The rules remain clear that, regardless of the situation, restraint is only to be used where no alternative method is available and should not be used for compliance.” She also said: “We look to you to actively promote the ethos that the use of force on children should only be used as a last resort.” The onus is now on STC operators to ensure that their staff understand and follow the Rules.

What, if any, other guidance is provided to staff to enable them to assess, in advance, whether or not the force they intend to use is proportionate?

This is covered in the training that custody officers receive. In addition, each STC issues local operating instructions to staff, which will assist custody officers in making judgements. It should be borne in mind that, on many occasions, the need to restrain arises in situations where immediate intervention is necessary if injury is to be avoided. Custody officers must use the minimum force necessary, but it may not be apparent at the beginning of the incident how much force that will be; it will depend upon whether the trainee complies with the restraint or responds violently. It is, of course, for the person using force to demonstrate, if challenged, that its use was necessary and the degree of force used proportionate in the circumstances.

Does the Ministry intend to follow the Coroner's recommendation [of a system of teaching PCC at a national level by national instructors]?

This recommendation is being considered by the PCC Management Board.

What has been learned from the [TCI] pilot? Will the results of the pilot be made public? Is it intended that the use of therapeutic crisis intervention will become widespread within STCs?

The evaluation of the TCI pilot at Hassockfield is still in progress. Outcomes at Hassockfield are being compared with a control establishment. The Youth Justice Board currently expects to learn the outcome of the evaluation by September 2008.

What steps are taken, and by whom, to ensure that restraint is not used too frequently or unlawfully?

The Youth Justice Board collects data on the frequency of restraint in all under-18 custodial establishments. If the Board has concerns about the level of restraint in a secure training centre, they will investigate. STC operators are required to provide the Youth Justice Board Monitor, within 24 hours, with a copy of the report of any incident of restraint. If the report gives grounds for concern, the Monitor is able to raise the matter with the operator or make a referral to the local child protection agencies, as appropriate. If necessary, the matter would be referred to the police.

The use of restraint is also one of the matters considered by Ofsted when it inspects an STC. The Youth Justice Board’s code of practice Managing Children and Young People’s Behaviour in the Secure Estate requires secure accommodation providers to have a system for administering restrictive physical intervention and specifies that it may only be used as a last resort, where there is no alternative. The Youth Justice Board is currently auditing compliance with the Code.
When restraint is used, what steps must a STC take to ensure that it learns any lessons?

The Youth Justice Board’s code of practice requires a debrief of the child following the incident (with the assistance of an advocate, if requested), and that the member of staff have the opportunity to discuss with a manager.

What training do YJB Monitors receive on restraint techniques? Who provides it? What refresher or follow-up training is provided?

Specific training in PCC, by instructors from the Prison Service Training Centre, is being arranged for Monitors of STCs. Some Monitors already have this but require refresher training.

How many STC officers (by year and establishment) have been (1) investigated or (2) disciplined over their misuse of restraint?

All complaints received relating to use of restraint are investigated. We are able to provide the following information on the number of officers disciplined for misuse of restraint:

- Hassockfield: no data available prior to 2004. In 2004, 7 officers were disciplined; in 2005, three officers; in 2006; three officers; and in 2007 to date five officers.
- Medway: no officers disciplined for misuse of restraint.
- Oakhill: in 2004, two officers were disciplined: in 2005, one; in 2006, three; and in 2007 to date, three.
- Rainsbrook: no officers disciplined for misuse of restraint.

Please provide us with a copy of a standard form contract with a STC?

A copy of the Hassockfield contract was placed in the Libraries when the centre opened. The House of Lords reference is HINF 99/855. We will arrange for an up-to-date contract to be placed in the Libraries.

In relation to the inspection of Hassockfield and Oakhill, what was the outcome of the unannounced inspections? Have the Ministry of Justice, the YJB or the Secure Training Centre concerned taken any steps in the light of these inspections?

The Commission for Social Care Inspection (CSCI) carried out an unannounced inspection of Hassockfield on 27 and 28 February 2007. The purpose of the inspection was to check progress against the recommendations made in the previous full announced inspection in August 2006. In summary, the Commission’s conclusions were as follows:

- Overall this was a positive inspection that reflected a management team with a clear improvement agenda that was gaining pace. The new developments and initiatives were beginning to have an impact on the quality of service to the young people and on the morale of the staff team. However, there was still work to be done and managers acknowledged that they had not yet achieved completion on a number of significant development areas.

The YJB noted the progress made and the areas for further development. The YJB was already aware of the performance issues raised in the report. The centre adapted its inspection action plan to take account of CSCI’s recommendations.

CSCI carried out an unannounced inspection of Oakhill STC on 17 and 18 January 2007, to check progress against the recommendations in the previous full announced inspection in June 2006. It found that little progress had been made against the actions recommended in the earlier report.

This confirmed the Youth Justice Board’s own assessment of Oakhill’s performance. In view of its concerns and as part of its improvement strategy, the YJB requested a further unannounced inspection. This took place on 24 and 25 April. (Responsibility for inspecting STCs had in the meantime transferred from CSCI to Ofsted.) The April inspection focused on outcomes in relation to “staying safe” and “management”, which were areas of particular concern for the YJB.

The Committee will be aware of the measures the Youth Justice Board has put in place to secure improved performance at Oakhill. (Please also see response to next question.) Ofsted carried out a full, announced, inspection on 8–11 October. The initial feedback suggested that there were some early signs of improvement in significant areas. However, there was considerable work still to be done for the centre to provide a consistently good quality service to young people. The YJB is awaiting Ofsted’s written findings.
What was the outcome of the YJB’s inspection of these two STCs?

The Youth Justice Board has this year conducted monitoring visits to Medway and Oakhill. The Medway visit took place because data indicated that use of physical restraint had risen significantly in the latter part of 2006. A team from the Board visited the centre from 28–30 March to observe its operation, speak to young people and examine documentation. No evidence was found that restraint was being used inappropriately.

Because of concerns raised by the YJB Monitor at Oakhill and reflected in the two unannounced inspection reports, a team from the YJB undertook a monitoring visit to Oakhill on 5 and 6 June 2007, to assess standards of order and discipline. The team concluded that immediate improvement was required if effective control of the centre was to be maintained. The Youth Justice Board required Malcolm Stevens, the new Director who took up post on 9 July, to draw up a recovery plan for the centre. We are currently considering Oakhill’s performance against the plan.

Beyond the joint Governmental review, what steps has the Government taken to ensure that the Youth Justice Board adequately fulfils its duty to provide a safe environment at STCs? What further steps are now being taken or are planned?

The Department for Children, Schools and Families and the Ministry of Justice work closely with the Youth Justice Board. The Chairman and Chief Executive have regular meetings with Ministers, and officials are in daily contact. The Board and the two Departments are each represented on the new PCC Management Board, which also includes representatives of the Department of Health, the Home Office, the Northern Ireland Office and Ofsted: The Management Board is taking detailed action to address concerns about PCC.

Given the Committee’s past interest in the issue of deaths in custody and detention more generally, why was it not informed before the Rules were amended or sent a copy of the draft Rules?

The coroner who presided at the inquest into the death of Adam Rickwood recommended urgent action to clarify the law. The Government acted on his advice by introducing the amended Rules as quickly as possible. The Rules were laid before Parliament on 13 June and came into force on 6 July.

Why were the Children’s Commissioner and the Ministry of Justice’s own panel of experts (the PCC Review Panel) not consulted before the Rules were amended? In addition, what prevented wider public consultation with key stakeholders on the Rules?

Any consultation exercise would require a policy proposal on which consultees could comment. As we did not intend to change Government policy on the use of physical restraint (that policy is outlined in the Youth Justice Board’s code of practice Managing Children and Young People’s Behaviour in the Secure Estate) we did not consider such an exercise was possible. Had we consulted, we would of course have consulted the Children’s Commissioner. As to the Review Panel: it should be understood that the panel does not have a continuous existence. In fact, a number of panels have been convened over the years to make recommendations on PCC techniques. There was no panel in existence at the time in question. Perhaps more importantly, the panel’s role is to advise whether individual techniques are safe, not when restraint should or should not be used.

Rule 43 Letter from Mr Andrew Tweddle following the conclusion of the inquest into the death of Adam Rickwood

ADAM RICKWOOD DECEASED

You will recall that at the conclusion of the Inquest last week I made reference to the fact that I would be writing pursuant to Rule 43 of the Coroners Rules. I pointed out at the hearing that though often construed as the Coroner making recommendations that is not what I purported to do but rather to report to the interested parties what action should be taken to possibly prevent the recurrence of similar fatalities in the future. Accordingly I write as follows:—

1. With regard to trainees transfer request forms from one establishment to another there needs to be a clearly defined protocol to identify whose responsibility it is to send what information and when to the transfer team at the YJB.

2. I would encourage a regular audit of information sent by Youth Offending Teams to the YJB to ensure that sufficient and adequate information is being provided to ensure that young people are allocated to the most suitable institution.

3. There needs to be clear training to ensure adherence to procedures and protocols affecting young people who may be subject to a Court Ordered Secured Remand.
4. I would hope that a review could be undertaken to enable consideration to be given as to whether there should be more than one level of response—perhaps a two tier response to what is presently known as (first response) as there has been evidence provided at the Inquest that a first response can be seen as an almost inevitable step towards PCC which may hamper the proper deployment of de-escalation techniques with the young person in question.

5. The evidence clearly indicated that there was confusion between PCC instructors, PCC trainers and Care Officers with regard to PCC its application and the reasons therefore and when if ever guidance in the appropriate manuals could be disregarded.

6. The YJB Monitor should be fully aware of all documents and statistics produced from an establishment with then detailed reporting procedures in place to ensure that all relevant information from all STCs is centrally monitored and assessed so the whole STS system and similar institutions may benefit.

7. Some staff members could not remember being trained in matters of self harm/suicide awareness and if they could not remember being trained it is doubtful that they could remember what their training did or ought to have included. Accordingly, it may well be of benefit to all staff employed in STCs for a review to be carried out of training within centres particularly in matters of suicide prevention/self harm.

8. The evidence at the hearing showed deficiencies in the CCTV system, the Morse Watchman system and handheld videos of restraints and therefore there should be clear management responsibility for ensuring the correct use of such technology that it is functioning adequately thus providing a significant benefit from protection for trainees and staff alike.

9. The evidence indicated certain system deficiencies with regard to handover procedures and therefore I believe that it would be of benefit for there to be clearly defined handover procedures to ensure that important and relevant information about trainees was handed over from one shift to another.

10. An urgent review should be undertaken to clarify the interrelationship between the Criminal Justice and Public Order Act 1994 (Section 9), the Secure Training Centre Rules issued thereunder and the Directors Rules to avoid any confusion whatsoever. It must be seen as essential that there must be no ambiguity in anyone’s mind, young person, staff, management or those in the YJB or indeed Government as to when the use of restraint or force to maintain good order and discipline or for compliance reasons is authorised.

It is my opinion that the foregoing represent real areas of concern which were highlighted by the evidence given at the Inquest and which ought to be brought to the appropriate authorities attention with a view to the recurrence of fatalities similar to Adam being prevented.

A copy of this letter is being sent to all the interested parties and I look forward to receiving your reply. Any reply may also be copied to those interested parties.

Andrew Tweddle
HM Coroner for the
North and South Districts of
Durham and Darlington

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9. Letter from the Rt Hon David Hanson MP, Minister of State, Ministry of Justice and Beverley Hughes MP, Minister of State, Department for Children Schools and Families

PHYSICAL CONTROL IN CARE (PCC)

Because of your previous interest in this issue, we are writing to let you know of the Government’s decision to suspend the use of two of the PCC restraint techniques. The techniques in question are the double basket hold and the nose distraction technique. Both of these techniques have been approved by the panels of experts to whom we have periodically looked for advice on safety issues. As you will be aware, a new panel of medical experts has now been convened. The new panel has expressed some concerns about these particular techniques. As a precautionary measure, therefore, we have decided to suspend their use until we receive the panel’s final recommendations. Before taking that decision, we obtained advice from the PCC Management Board. The current review of restraint in juvenile custodial settings will also consider the wider issue in the next few months.

We will keep you informed of any further developments, including the panel’s final recommendations, which are expected early in the New Year and the Government’s response to them.

18 December 2007
10. Memorandum by the Commission for Racial Equality

INTRODUCTION

1. The Commission for Racial Equality (CRE) was established by the Race Relations Act 1976 to:
   — work towards the elimination of racial discrimination;
   — promote equality of opportunity and good relations between persons of different racial groups; and
   — keep the working of the Act under review.

2. Public bodies have a duty to eliminate discrimination in the way they work and to promote equality of opportunity and good race relations. The Commission is working to help them deliver this duty.

3. The Race Relations 1976 as amended came into force on 2 April 2001 and imposes a general statutory duty on most public authorities—including the police service, probation service, Crown Prosecution Service, courts and prison service—to promote race equality.

4. The CRE’s primary goal is to create an integrated society. We have defined an integrated society as being based on three inter-related principles:
   — equality for all sections of the community—where everyone is treated equally and has a right to fair outcomes;
   — participation by all sections of the community—where all groups in society should expect to share in decision-making and carry the responsibility of making society work; and
   — interaction between all sections of the community—where no-one should be trapped within their own community in the people they work with or the friendships they make.

5. Young people are vital to creating an integrated society. The CRE has been undertaking a major work programme exploring the experiences of ethnic minority children and young people across all sectors from birth to 25 years old and where they “fall out of the system”. One of the key issues for the CRE is the treatment and experiences, as well as the over-representation, of ethnic minority children and young people in the youth justice system.

6. The CRE is therefore grateful for the opportunity to make a written submission to the Joint Committee on Human Rights inquiry into the use of restraint in secure training centres (STCs). Our submission is divided into two sections: (a); general comments and (b) specific comments relating to disproportionality in the youth justice system.

A. GENERAL COMMENTS

7. The CRE welcomes the Committee’s inquiry into the use of restraint in STCs and the scrutiny of the Secure Training Centre (Amendment) Rules 2007. It is particularly timely given the recent inquest into the death of 15 year old Gareth Myatt—a boy of mixed heritage who was the first to die after losing consciousness while being restrained by three adult officers—which heavily criticised the Youth Justice Board (YJB) for failing to protect children in custody.

8. The CRE is concerned that the widening of powers on the use of restraint, to include its use to ensure “good order and discipline” may impact disproportionately on ethnic minority children, who are already over-represented in the youth justice system.

9. The Carlile Inquiry highlighted the high levels of restraint used against children in STCs and Young Offender Institutions (YOIs). Worryingly, no information was available about the use of restraint against ethnic minority children and no evidence that this was being monitored. Given the over-representation of ethnic minority children in the youth justice system—as well as the YJB’s duties under the Race Relations Act, as amended—this is a disturbing finding.

10. The CRE believes that the amendments to the Secure Training Centre Rules legitimise the use of violence against vulnerable children who should be regarded as children first and offenders second. The use of violence to ensure good order and discipline will simply perpetuate the view that violence, in whatever form, is acceptable.

5 The Carlile Inquiry An independent inquiry by Lord Carlile of Berriew QC into physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes. 17 February 2006
B. SPECIFIC COMMENTS

Ethnic minorities and the youth justice system

11. In its Annual Review 2003–04, the Youth Justice Board (YJB) commented on the “growing body of data suggesting that Black and minority ethnic (BME) young people receive disproportionate sentence outcomes and disposals . . . When compared with the previous year, it suggests that this disproportion is increasing”.6

12. During 2003–04, the YJB commissioned two pieces of work to determine the underlying causes of disproportionality in the Youth Justice System (YJS).

13. NACRO undertook an audit of available data, including a literature review as well as semi-structured interviews with practitioners in Youth Offending Teams (Yots) and YJB regional managers. Amongst other things, they found:
   — a lack of ethnic monitoring of service delivery;
   — that performance measures did not touch on diversity and equalities issues;
   — that ethnicity is not recorded for a significant number of Yots; and
   — that ethnic minorities were more likely to be prosecuted.

14. In addition, the University of Oxford was commissioned to investigate 17,054 case decisions in assessing whether there was evidence of discrimination in the outcomes for ethnic minority young people. The result of this research was published as Differences or Discrimination? Minority ethnic young people in the youth justice system in June 2004.7

15. Eight Yot areas were chosen for the study—seven with relatively high concentrations of ethnic minority young people and one rural area with a relatively low concentration. In 65% of cases, the young person was White, 17% Black, 7% Asian, 3% Mixed-parentage, 1% Other and in 7% of cases ethnicity had not been recorded.

16. The main findings included:
   — there were, at various points of the processes, differences that were consistent with discriminatory treatment;
   — particular concerns were raised by:
     (a) higher rate of prosecution and conviction of Mixed-parentage young males;
     (b) higher proportion of prosecutions involving Black young males;
     (c) greater proportion of Black and Asian males that had been remanded in custody prior to sentence, especially the greater proportion of Black males remanded whose proceedings had not resulted in a conviction;
     (d) slightly greater use of custody for Asian males;
     (e) greater use of more restrictive community penalties for Asian and Mixed-parentage males, especially those aged 12–15;
     (f) much higher probability that a Black male would, if convicted at a Crown Court, receive a sentence of 12 months or longer;
     (g) greater likelihood that Black and Asian males aged 12–15 would, if they received one of the more restrictive type of community sentences be under supervision for longer than 12 months; and
     (h) much greater proportion of Mixed-parentage females who were prosecuted.

17. These findings are backed up by the latest data from 2004–05 which shows differences between ethnic groups in relation to unconditional bail. Of those cases where bail was given, 66.3% of White and 63.1% of Asian and mixed young people were given unconditional bail compared with 58% or Black young people. In addition, 8.1% of Black defendants were remanded in custody, compared to 5.1% for Asian people and 4.4% for White people.8

18. The University of Oxford research also included interviews with Yot managers and practitioners. The interviews revealed that many stereotypes persisted among Yot practitioners—these related to views of different ethnic groups and the offences they committed; what a “good family” should look like; and what constitutes good parenting. Such stereotypes could have an effect on the perception of needs and risks posed by ethnic minority and White young people and on the behaviour of professionals working with these groups.

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19. Having received a custodial sentence, research suggests that ethnic minority young people are further disadvantaged and suffer discrimination in prison. A report by HM Inspectorate of Prisons and the YJB—based on a survey of young people under 18 in all young offender institutions—states that ethnic minority boys are significantly more likely to report staff victimisation than White boys with 15% reporting that they had been physically assaulted by staff (compared to 8% of White youths).9

20. Similarly, evidence from reports of Her Majesty’s Inspectorate of Prisons shows that certain ethnic minority prisoners are over-represented in the prison disciplinary system and are more likely to feel victimised by staff. This can often be the result of officers misinterpreting the behaviour of prisoners as overly aggressive and threatening due to the influence of negative stereotypes that affect the attitudes of some staff. This may mean it is more likely that restraint would be used disproportionately against children from certain ethnic minority groups.

21. Research commissioned by The Children’s Society explores the experiences of young Black men in custody.10 Young men believed that Prison Officers could say “racist things” because of the power that they had in prison but which they felt they would never say if they encountered them on the streets. The outside world was considered as a more equal space than prison. The report also highlights that many young men had never heard of the prison’s complaints procedure; the Race Relations Liaison Officer (RRLO); or the Race Relations Management Team. None of the specific racial incidents detailed in the report had been reported to the RRLO and were therefore not recorded in any formal monitoring data.

22. A Children’s Rights Alliance report also comments that “racism and other forms of discrimination is a common feature of most of the institutions”.11 Their analysis of HM Inspectorate of Prisons reports reveals disproportionately high numbers of Black children of Caribbean origin and a high proportion of Black prisoners given cellular confinement.

23. All this evidence raises serious concerns about the vulnerability of young Black men in custody, particularly given the fact that they have usually experienced multiple forms of disadvantage—of which racism is often a feature—before entering prison.

24. More recently, Lord Carlile’s report on the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes identified an unacceptable level of pain being used to restrain children in secure custody. At the same time, YOIs did not keep central records of how many children had been injured in restraint incidents, despite one in five restraints resulting in injury.

25. Given the over-representation of ethnic minority young people in the youth justice system, coupled with evidence of racism and discrimination in institutions, the CRE is concerned that restraint may be used disproportionately against ethnic minority children and young people. Furthermore, the lack of ethnic monitoring of the use of restraint—as uncovered in Lord Carlile’s inquiry—means that there is currently no way in which to ascertain whether there is any adverse impact on particular racial groups.12 The extension of the circumstances in which restraint may be used to include ensuring “good order and discipline” therefore increases the opportunities for restraint techniques to be used disproportionately against particular groups.

CONCLUSION

26. Although research and data is limited, the available evidence does show that ethnic minority young people experience differences in outcomes in the youth justice system that are indicative of discriminatory treatment. The causes of this differential treatment remain unknown and the CRE, jointly with the ESRC, has commissioned research to explore this further.13

27. The CRE is concerned that any discriminatory treatment may extend to the use of restraint techniques against young people in STCs. Reinforced by the recent findings of the inquest into the tragic death of Gareth Myatt, the CRE has serious concerns about the widening of the powers of STC staff to use restraint and would want to see the Statutory Instrument annulled immediately.

Claire Cooper
Senior Policy Officer, Public Policy

3 September 2007

12 The CRE wrote to the Youth Justice Board in March 2007 asking what action was being taken to ensure that the use of restraint does not have an adverse impact on ethnic minority children and young people. In their response, the YJB stated that an agreement had been reached with the secure estate about the definitions of restraint, single separation, self-harm and assault and they will be collecting information on each of these broken down by ethnicity and gender from 1 April 2007.
13 http://www.esrcsocietytoday.ac.uk/ESRCInfoCentre/opportunities/current_funding_opportunities/racialequality.aspx?

11. Memorandum by Sally Keeble MP

This is a short note for your select committee’s investigation into the use of restraint in secure training centres. The investigation is very welcome, as this has been an issue that has been of great concern to me for some time.

The press notice on the inquiry set out two major areas of interest for the committee: the compatibility of the rules with international human rights standards, and observations regarding the use of force against children in secure training centres. To deal with them in reverse order:

(i) General observations regarding the use of force against children in secure training centres

My main concerns in this area are:

— **Frequency of use**—Although it is said that restraint is used as a last resort, the figures show otherwise. They show that on average restraint is used at least once a day most days in all the secure training centres. This would seem to me to be routine use. It also appears from the figures that restraint is used disproportionately against a small group of young people.

The information that emerged from Gareth Myatt’s inquest also confirmed other more anecdotal reports that restraint was used after staff tactics had resulted in aggressive behaviour by the young person. Gareth had allegedly refused to comply with an instruction from a member of staff and had been sent to his cell. Two members of staff then went into the cell and said that because he had failed to comply with the instruction they were going to remove belongings from his cell. They removed a number of items, and then when they removed a piece of paper with his mother’s phone number on he allegedly tried to fight them to get it back. At that point they restrained him.

— **Inadequacy of staff training**—Training for staff in use of restraint is by cascading it down from a small number of staff who are provided with some level of off-site training. Given the seriousness, this is inadequate, especially given that the staff may lack general training in the care of children and young people, and are also not given a manual.

— **Inadequacy of monitoring**—It is not at all clear that there is full recording of the use of restraint and its consequences. I attach a page (document A) from www.theyworkforyou.com, in which a staff member disputes the official record.

In addition, the frequency of the use of the nose distraction technique, with its ability to cause nosebleeds, would suggest that there is under-reporting of injuries. In addition, I have asked about the use of two particularly dangerous holds, and the official response (document B) shows that these are not separately recorded.

There does not seem to be a proactive approach to reporting. For example, after concerns were raised in 2004 about the use of restraint, it seems that there were some efforts to reduce the usage. There were then reports that handcuffs were being used on the young people instead. This was confirmed in an adjournment debate. However, regular records on the use of handcuffs on young people have not been used, including whether these have been Velcro or metal handcuffs.

In addition, the monitoring arrangements put in place by the Home Office do not seem to work:

(a) There is no evidence of compliance with the detailed reporting requirements of the Home Office monitor on each use of restraint. At the Gareth Myatt inquest, the Home Office monitor said he found it difficult to challenge some of the decisions at Rainsbrook.

(b) The special advisory panel on restraint has only rarely met, and did not meet at all between 1998 and November 2004.

(c) The inspection regime has been weak with a very limited number of unannounced inspections.

— **Lack of accountability**—The lines of accountability may be limited because the secure training centres are all in the private sector. A particular concern here is about staffing issues. Government policy is that all staff should be CRB checked. However, this is not the same as saying that they have all been CRB checked.

— **Techniques used**—I am very concerned about the techniques used. The system of restraint used was drawn up by the providers. The hold used on Gareth Myatt was found to be so unsafe that it was banned immediately—which begs the question of why it was permitted in the first place. Other holds have been said to be unsafe, in particular the double basket hold and the figure of four hold, have not been banned and their use is not recorded. There seems to be a lack of clarity about some of the holds, which may be because of the inadequacy of training and the lack of documentation for the staff.

Although it is said that “nose distraction” is only mean to distract the young person and not to be painful, it is painful. I am concerned about the deliberate use of pain on young people on a routine basis in the context of the secure training centres.
(ii) Compatibility of rules with international human rights standards

It would seem to me that the level of force used is excessive and is not subject to proper monitoring or scrutiny and would make only the following two points:

— Confidentiality arguments about children can be used to withhold information. I tabled the attached question (document C) about a particular young person who was restrained at Rainsbrook. The letter back castigated me for putting the name of the young person on the public record—and also confirmed much of the information I had been given. It seems to me that it is completely wrong that provisions that are supposed to protect a child from abuse—ie protecting the child’s confidentiality—should be used to prevent scrutiny of unacceptable treatment of a child or young person.

— Lack of a voice for the child and lack of appeal—There is no evidence that the views of the young person are recorded. Linked to this is the apparent lack of any effective appeal process. Although there is theoretically the opportunity for incidents of restraint to be reported to the local authority for a child protection review, this does not seem to happen often, which is surprising given the number of incidents of restraint. In the case of the young man referred to above it was said that the complaint to the local authority was discontinued. The information I received was that this was done because of threats of disciplinary action against staff who had opposed what had happened to the boy.

(iii) Legislative framework for the use of restraint

The former Parliamentary Under Secretary of State at the Home Office set out in an adjournment debate in 2004 the basis on which restraint was introduced, and made no suggestion that there were any legal shortcomings in the process.

I hope that these brief points are of assistance to your committee in its inquiry.

I have copied my letter to Andrew Dismore and also to Baroness Stern.

A hard copy follows in the post—including hard copies of the attachments which I have not been able to get in electronic form.

Do let me know if you would like any further information.

Sally Keeble MP
Northampton North
3 September 2007

12. Memorandum by The Youth Justice Board for England and Wales

Introduction

1.1 The Youth Justice Board for England and Wales (YJB) welcomes the opportunity to provide written evidence in response to the Joint Committee on Human Rights call for evidence on the use of restraint in secure training centres.

1.2 The evidence is presented in the following sections:

— Summary of Issues.
— The role of the Youth Justice Board (YJB) and developments in secure estate provision.
— Background on the characteristics of young people in custody.
— An overview of the different types of restraint methods used in secure establishments for children and young people and recent developments.
— Monitoring of restraints.
— Data that the YJB holds on the use of restraint in STCs.
— The YJB’s Behaviour Management programme.

Summary of Issues

1.3 The YJB is committed to commissioning secure facilities that have a culture centred on the child and young person and that respects the rights of young people.

1.4 There is no single method of restrictive physical intervention (restraint) used across the different types of facilities for children and young people but the YJB has been working to develop common standards and principles.
1.5 The method of restraint used in Secure Training Centres (STCs) is called Physical Control in Care (PCC). The policy originated in the Home Office in the mid 1980. HM Prison Service was commissioned to develop the system of restraints and legal responsibility now lies with the Secretary of State for Justice.

1.6 Oversight of PCC is being developed by a new PCC Management Board established on behalf of the Ministry of Justice and a medical review of PCC is planned for November 2007.

1.7 The government has announced a wider review of restraint across different settings where children and young people are held. This has been welcomed by the YJB.

1.8 The YJB is clear that restraint must be used only as a last resort. Behaviour management strategies must be used to minimise the circumstances where restraint is unavoidable.

1.9 It is recognised that no method of restraint can be totally risk free. The YJB’s work on behaviour management set out in this paper is designed to support custodial establishments to reduce the circumstances where restraint is used.

### Approaches to Restraint

1.10 All methods of restraint rely on one of two approaches or a combination of both.

1.11 Non-pain compliant methods rely on techniques that involve the use of force to overwhelm but not hurt the person being restrained. These techniques are difficult to use successfully where the young person is large and powerful (or where the staff member is small in stature). Non-pain compliant methods also require the involvement of a larger number of staff members and may last for some period of time until the young person has calmed down. The risks posed by restraint increase the longer the incident lasts. The major risk is death from positional asphyxia.

1.12 Pain compliant methods rely on techniques which create pain on the wrist joint, but only if the person being restrained resists. Because they use techniques which inflict pain, they can be used successfully on large and powerful individuals (regardless of the size of the custody officer). Incidents can quickly be brought under control. The major risk is of broken wrist bones. There is less risk of positional asphyxia than with non-pain compliant methods of restraint.

1.13 Both pain compliant and non-pain compliant methods of restraint must be used correctly to minimise risk of injury to both the young person and staff member.

### Role of the YJB and Developments in the Secure Estate

1.14 The YJB is a non-departmental public body (NDPB) created by the Crime and Disorder Act 1998. It oversees and supports performance in the youth justice system in line with the principal statutory aim for the system of preventing offending by children and young people. The YJB does not manage directly youth justice services. Since April 2000, following the introduction of secondary legislation, the YJB has had the specific responsibility for commissioning secure accommodation for children and young people sentenced or remanded by the courts. The YJB maintains oversight of contracts and service level agreements (SLAs) for secure accommodation services. The YJB’s only executive function is to operate the placement service for children and young people sentenced or remanded by the courts developed following the establishment of the YJB. Statutory responsibility for approving PCC techniques rests with the Secretary of State for Justice, not the YJB.

1.15 The specific functions of the YJB are to:

- Advise the Secretary of State on the operation of, and standards for, the youth justice system.
- Monitor the performance of the youth justice system.
- Purchase places for, and places, children and young people remanded or sentenced to custody.
- Identify and promote effective practice.
- Make grants to local authorities and other bodies to support the development of effective practice.
- Commission research and publishes information.

1.16 The YJB commissions custodial places for children and young people who have been remanded or sentenced to custody from three types of secure establishments, collectively known as the secure estate for children and young people:

- Young Offender Institutions (YOIs). These are mostly Prison Service-run secure facilities (although two are privately operated). They house young people aged 15–17 in dedicated units separate from 18–21 year olds. YOIs have lower ratios of staff5(194,706),(800,948)
Secure Training Centres (STCs). These are privately-run centres that generally house younger and vulnerable young people up to the age of 17. STCs are purpose-built centres for young people and are run by private operators under managed contracts, which set out detailed operational requirements. The typical staff-to-young person ratio in an STC is 3:8. The YJB took on the contract management of STC Contracts from the Home Office in 2000 and let a new contract itself in 2004. The Secretary of State must designate establishments as STCs. STCs are inspected by Ofsted. The YJB currently commissions places in four Secure Training Centres.

Secure Children’s Homes (SCHs). These are local authority-run centres (with one privately-run), generally used to accommodate young offenders aged 12 to 14, together with older girls and boys who have been assessed as needing extra care. They are overseen by the Department for Children, Schools and Families in England, and Social Services for Wales and are inspected by Ofsted in England and Estyn in Wales. Out of the three types of establishments, secure children’s homes have the highest ratio of staff-to-young people, and are generally smaller, ranging in size from six to 40 beds. The YJB currently commissions places in 15 Secure Children’s Homes.

1.17 STCs are procured via a Private Finance Initiative (PFI). This means that the private provider designs the facility; raises the funding necessary for the construction; completes the construction; and then maintains and operates the facility. The YJB pays to make use of places and services at the facility and the provider uses the payments they receive to cover the costs of the maintenance, the operation, and to repay the debt incurred in financing the construction.

1.18 The methods of restraint in each sector of the secure estate differs. YOIs use Control and Restraint (C&R), a pain-compliant form of restraint. STCs use PCC which is non-pain compliant. Local authority SCHs use a range of restraint methods both pain and non-pain compliant.

1.19 Section 8 of the Criminal Justice and Public Order Act 1994 provides that contracted out STCs must have both a Director approved by the Secretary of State and a Monitor who is a Crown Servant appointed by the Secretary of State. The Monitor’s functions include keeping under review the running of the STC and reporting on the running of the STC to the Secretary of State. The STC Rules 1998 provides further detail on the specific roles and responsibilities of an STC Monitor.

YJB COMMISSIONED PLACES FOR YOUNG PEOPLE (AS AT APRIL 2007)

<table>
<thead>
<tr>
<th>Accommodation Type</th>
<th>Number of Bed Places</th>
<th>Either</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td></td>
</tr>
<tr>
<td>Secure Children’s Homes</td>
<td>N/A</td>
<td>N/A</td>
<td>235</td>
</tr>
<tr>
<td>Secure Training Centres</td>
<td>N/A</td>
<td>83</td>
<td>218</td>
</tr>
<tr>
<td>Young Offender Institution</td>
<td>2,920</td>
<td>91</td>
<td>N/A</td>
</tr>
<tr>
<td>TOTALS</td>
<td>2,920</td>
<td>174</td>
<td>453</td>
</tr>
</tbody>
</table>

1.20 Since taking responsibility for the commissioning of secure estate places the YJB has sought to reform provision. Some of the key progress made was set out in the YJB’s Strategy for the Secure Estate for Children and Young People and our published update on that strategy. Developments have included:

— Significant progress in the establishment of a discrete secure estate for children and young people, in contrast with the situation before 2000, when there was little separation from adults.

— The establishment of a national placement system that matches placement to need, subject to resource constraints.

— Improvements in healthcare arrangements, including provision of 24-hour health care, physical and mental health screening.

— Improvements in safeguarding arrangements, including rigorous screening for risk and need, better transmission of information, introduction of independent advocacy services, and investment in improved and safer physical environments.

— Improvements in educational provision, including a national audit of need, the introduction of individualised literacy and numeracy programmes, capital investment, and increased revenue spend, which has facilitated the employment of additional earning support assistants and additional specialist expertise.

— Investment in over 50 Youth Offending Teams by the YJB to deliver intensive resettlement and aftercare programmes (RAP) for children and young people per year who leave the secure estate with a substance misuse or mental health problem.

— Additional new dedicated places for girls.

— Plans to create smaller units to improve closeness to home, and to create some specialist facilities to deal with more challenging and vulnerable young people.
1.21 The YJB’s *Strategy for the Secure Estate for Children and Young People* also set out the principles which inform the YJB’s approach to developing the secure estate. While recognising that the scope for development is subject to resources and other constraints YJB set out its principles which include that *secure institutions should:*

- Have a culture centred on the child and young person.
- Minimise the likelihood of harm to young people through integrated and rigorous safeguarding measures.
- Provide high quality physical and mental health services.
- Have regimes that are fundamentally geared to the individual educational, training, recreational, cultural and personal development needs of children and young people.
- Employ an approach to behaviour management that emphasises to the greatest possible extent positive encouragement and reward.
- Be run by staff committed to working with children and young people who are adequately trained in this area of work, and who have completed nationally approved training in effective practice work with young people who have offended.

**Physical Intervention in Secure Establishments**

1.22 The Youth Justice Board recognises that there is strong public interest in this issue, and is working to support the development of practice in this area. We have welcomed the announcement in July of a joint Ministry of Justice and Department for Children, Families and Schools review of physical restraint of children and young people in each of the three types of establishment and will work closely to support the review.

1.23 The inquests that have been held this year into the tragic deaths of Adam Rickwood and Gareth Myatt raised significant issues in relation to the use of restraints. Alongside our existing work on the use of restraint and behaviour management, the YJB is developing clear action plans to address recommendations made by the Coroners in those inquests that have been directed at the YJB. We hope also that those recommendations, where relevant, will inform the review announced by the government. Many of the issues raised by the inquests are already being addressed by on-going work by the YJB. We are committed to developing our work to help ensure that custody for young people is safe, secure and addresses the causes of their offending behaviour wherever possible.

1.24 The Youth Justice Board’s position on the use of physical intervention on young people has been set out in our Code of Practice Managing the Behaviour of Children and Young People in the Secure Estate. This specifies that restrictive physical interventions must only take place as the result of a risk assessment, as a last resort, and should use only the minimum force necessary, for the shortest possible period of time. We recognise that the different sectors of the secure estate have different guidance, rules and governing legislation. We believe that the standards set out in our Code of Practice reflect, and are compliant with, international conventions and treaties, including the United Nations Convention on the Rights of the Child.

1.25 The YJB recognises that the reality of managing the behaviour of young people in custody is a complex task. Despite behaviour management strategies, there will still be times when there is problematic, testing and sometimes violent behaviour from some young people aimed at staff, other young people or themselves. On some occasions, the behaviour is so difficult that restraint is necessary.

1.26 Our experience shows the difficult behaviour increases where establishments are experiencing a great deal of “churn” or large turnaround of children and young people and where group dynamics become unstable as a result.

1.27 The YJB expects that if an effective behaviour management strategy is in place the need for restraint should be reduced, but it can never be eliminated entirely. Staff must have the powers they need to run secure establishments and keep both young people and staff safe. A loss of control in any custodial establishment would put young people, staff and visitors at risk. Young people do not necessarily disagree with this themselves, as one young person states:

“If a restraint that’s getting done on me is done correctly then I feel safe because they are stopping me from hurting myself, hurting somebody else or doing something stupid.”

1.28 Young people sentenced to custody represent some of the most vulnerable and excluded in society. Many have spent time in care, have been excluded from school, and have a record of poor educational achievement, mental health problems and, frequently, histories of abuse and substance misuse.

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14 Who Cares? Scotland (2003), *Let’s Face It!* , page 35. Similar views were also expressed by young people through the recent CSCI report, *Children’s Views on Restraining*. 
1.29 Over 80% of boys and 65% of girls in custody will have been previously excluded from school. For almost half of the boys, their last experience of formal education will have been when they were aged 14 years or younger. Research undertaken in secure mental health settings, where the young people share similar characteristics with those in custody, found that education is one of the most common occasions for conflict to arise. This may be because, as a result of their previous disengagement from education, young people struggle to meet the “normal” expectations of being in a classroom, such as not talking and remaining in their seat.

1.30 The behaviour of young people in custody can be extremely challenging and sometimes violent. There are also high levels of self harm. Research by the YJB shows that displays of aggression are strongly associated with youth criminality. There is also a growing number of young people in custody who have been convicted of serious violent offences including rape and robbery and gang-related offending.

1.31 While many factors need to be considered in relation to these issues, aggressive young people may struggle at times to interpret and judge other people’s reactions. This can lead them to incorrectly assuming that peers or adults are being hostile and confrontational, and as a result they may respond to innocent gestures in a verbally or physically violent manner. It is crucial that we reduce the use of restraint to an absolute minimum, but we must not overlook this important context in which behaviour management strategies need to be developed and the challenges that have to be faced.

Restraint Methods

1.32 There is no single method of physical intervention applicable across the secure estate for children and young people. Prior to the establishment of the YJB each of the sectors evolved independently from the others in accordance with its own governing legislation and guidance. Consequently, a variety of physical intervention techniques is in use.

1.33 Methods of physical restraint used in Secure Children’s Homes are not subject to Secretary of State approval, and a number of methods are in use. Each Secure Children’s Home is responsible for procuring training in restraint techniques, usually from commercial providers. Guidance on the use of restraint has been provided in turn by the Department of Health and DfES. SCHs also comply with guidance given in The Children Act 1989 Guidance and Regulations—Volume 4 (Residential Care). There is no central oversight of these techniques or their use.

1.34 Young Offender Institutions use Control and Restraint techniques developed by the Prison Service. Guidance on their use is provided by Prison Service Order 1600.

1.35 Physical intervention techniques used in the STCs must be approved by the Secretary of State. Approval for the use of Physical Control in Care (PCC) was first given in 1998, when the first STC was instituted. PCC was developed by the Prison Service specifically for use on children and the Prison Service is responsible for producing and updating the PCC Manual.

1.36 Under the YJB’s contract with STC providers, all custody staff must undertake a training course which must include training on physical restraint by accredited Home Office instructors. Refresher physical restraint must be given at regular intervals (at least once a year) by accredited instructors.

1.37 PCC is also used by the Borders and Immigration Agency and by the Juvenile Justice Centre operated by the Northern Ireland Office.

1.38 As well as the main holds used, PCC included three “distraction” techniques for use in dangerous or violent situations where a person is at serious risk of injury. The distraction techniques are used to inflict a brief, sharp burst of pain to the nose, thumb or ribs. They must only be used as a last resort after other attempts to control the young person have failed. Distraction techniques are designed to provide the safest means possible in the circumstances for staff to manage a potentially dangerous situation.

1.39 After the inception of Secure Training Centres in 1998, a commitment was made by the Home Office to review PCC after one year of operation. In the transfer of responsibilities for secure facilities from the Home Office to the YJB, this commitment to review PCC was lost sight of. In the event, no review of PCC took place until 2004, and the YJB regrets deeply there was no earlier review.

1.40 Before a review of PCC got properly underway, Gareth Myatt tragically died on 19 April 2004 while being restrained in Rainsbrook STC. The Seated Double Embrace—the restraint hold used on Gareth—was subsequently suspended.

1.41 In February 2004, the YJB had commenced work to undertake a medical review of PCC. Difficulty was experienced in recruiting panel members with appropriate expertise and in agreeing dates on which they could observe the demonstration of the PCC techniques. This delayed the panel convening until November 2004. The Panel met again to agree its recommendations in early March 2005 which were subsequently approved by Ministers for the revised system for use in STCs. The recommendations for immediate implementation, such as the permanent suspension of the double seated embrace, were incorporated into a revised training programme in December 2005 and this was rolled-out to all STCs by April 2006.

1.42 The YJB has since established a process to ensure that PCC is reviewed regularly on an ongoing basis comprising a number of cyclic stages as set out in the diagram below.

**Figure 1**

PCC REVIEW

- Deliver revised training to STC staff
- Amend PCC Manual and training package
- Prepare submission and get Ministerial approval
- Set up independent medical panel
- Panel review PCC techniques, restraint data and exception reports
- Panel prepare report of findings and agree recommendations

1.43 In March this year, the YJB commenced the process to undertake another medical review of PCC. The intention is for an independent panel to provide governance on behalf of the Secretary of State for Justice. It is scheduled to meet to review the current PCC techniques on 2 November 2007. The panel will include a forensic pathologist as well as other medical and public health experts, including a paediatrician, a physiotherapist, a children’s Orthopaedic Surgeon and a Child and Adolescent Psychiatrist. The panel will meet to review the holds employed in PCC. All recommendations from the independent panel will be reported via the PCC Management Board to Ministers.

1.44 A focus on the Joint Committee’s interest is the changes to the rules governing restraint in STCs introduced by the Government earlier this year relating to the legal position of custody officers using reasonable force, where necessary, to maintain good order and discipline. The YJB supported the proposed change because the Coroner in the inquest into the death of Adam Rickwood requested a clarification of the law on this issue.

1.45 The Criminal Justice and Public Order Act 1994 places a duty on custody officers to maintain good order and discipline. It allows for the use of reasonable force, where necessary, to achieve this. However, the Secure Training Centre Rules, which govern the use of restraint in STCs, did not explicitly permit physical restraint to be used for this purpose. Earlier legal advice was that the duty set out in the 1994 Act had primacy over the Secure Training Centre Rules. However, it became apparent at the inquest into the death of Adam Rickwood that this was not clear.

1.46 The YJB has made explicit to STC operators its view that the change to the rules governing restraint in STC should not lead to an increase in the use of restraint. Our Code of Practice on behaviour management makes explicit that restraint should always be used as a last resort, never for punishment, and must not be used to simply ensure compliance with staff instructions. The YJB believes that the change in the STC rules should not be viewed in isolation and needs to be viewed alongside wider work to develop practice and improve behaviour management strategies which can impact on the use of restraint.

**Monitoring the Use of Restraint in Secure Training Centres**

1.47 When a young person has been subject to physical restraint in an STC, the custody officers involved complete a report immediately after the incident. This is signed by the unit manager, duty operations manager and duty director and copied to the monitor within 24 hours. The report details the reasons taking such action was necessary.
1.48 The STC Director has management responsibility for reviewing these incidents to ensure that restraint was used within the rules, and to learn any lessons which could prevent similar situations from arising. The YJB Monitor checks that this has been carried out by reviewing incident reports. The YJB Monitor can raise issues or questions with the Director where appropriate. Any incident is also logged in the STCs physical restraint care log book. Records are checked weekly by a nominated head of department and audited. Data is reported centrally to the YJB on a monthly basis.

1.49 STCs report to both the YJB Monitor and to the YJB centrally of any exceptional injury such as vomiting that may occur during a restraint episode. These exception reports are logged with the YJB’s medical adviser and with PCC trainers at the Prison Service College at Kidlington. This ensures that, if necessary, any concerns can be acted upon immediately.

1.50 The YJB monitors performance across secure establishments and sets minimum national standards regarding behaviour management, and the use of restraint. Concerns are addressed by the YJB in a range of ways. We worked hard to improve arrangement to strengthen our monitoring function following an internal restructuring and our ability to trigger more detailed monitoring of establishments if assessed as necessary. The YJB has also established an “exception reporting” mechanism to draw the immediate attention of YJB managers and the Chief Executive to any serious incidents or issues.

DATA ON THE USE OF RESTRAINT IN SECURE TRAINING CENTRES

1.51 In February 2006, the YJB began collecting data on the number of restraints taking place across the secure estate for children and young people in order to be able identify trends and issues across the sectors. However, following analysis differences in practice and reporting standards in the three sectors of the secure estate were identified that meant that the data collected was not directly comparable. To address this issue the YJB established a data reference group, with representatives from all three sectors, the Commission for Social Care Inspectorate and the Department for Education and Skills to agree common definition of restraint. The definition agreed is:

“Any occasion when force is used with the intention of overpowering or to overpower a young person. Overpower is defined as ‘restricting movement or mobility’”.

1.52 Agreement over the common definitions was reached in January 2007 and a new data collection system began formally in April 2007, which also allowed for data across the sectors to be broken down by ethnicity and gender for the first time.

1.53 The graph below shows the average number of restraints per child at each establishment based on data from May 2006 to June 2007. Averaging across the establishments in each sector, the data shows that STCs and Secure Children’s Homes report comparable numbers of restraints taking place. There was an average of 0.65 restraints per child per month in STCs compared to the slightly higher figure of 0.67 in secure children’s homes. It should be noted that some children and young people can raise particularly difficult behaviour management issues that lead to higher than average numbers of restraints and conversely others would be subject to a lower than average rate of restraint. Additionally, a great deal of movement into and out of establishments—as experienced currently due to population pressures on the secure estate—can lead to an increase in the number of incidents necessitating restraint.
Figure 2
AVERAGE RESTRAINT PER CHILD PER MONTH (MAY 2006 TO JUNE 2007)
1.54 The table below details the percentage of Black and Minority Ethnic (BME) children and young people and White children and young people restrained compared to their respective proportions of the total population in establishments using data from April 2007 to June 2007. The table shows that for this three month period Black and Minority Ethnic young people were not significantly more or less likely to be restrained than white young people.

### Table 1

**ETHNIC ANALYSIS OF RESTRAINT DATA—APRIL 2007 TO JUNE 2007**

<table>
<thead>
<tr>
<th></th>
<th>BME</th>
<th>White</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STCs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% of children in unit during the month</td>
<td>23%</td>
<td>77%</td>
</tr>
<tr>
<td>% of restraints used</td>
<td>23%</td>
<td>77%</td>
</tr>
<tr>
<td><strong>YOIs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% of children in unit during the month</td>
<td>27%</td>
<td>73%</td>
</tr>
<tr>
<td>% of restraints used</td>
<td>29%</td>
<td>71%</td>
</tr>
<tr>
<td><strong>SCHs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% of children in unit during the month</td>
<td>20%</td>
<td>80%</td>
</tr>
<tr>
<td>% of restraints used</td>
<td>18%</td>
<td>82%</td>
</tr>
</tbody>
</table>

1.55 The YJB also collects data on the number of injuries arising from restraint across the three sectors. The following table records the total number of restraints for the reporting period (April 2007 to June 2007), and compares this to the number of restraints where a young person sustained a “minor injury requiring medical treatment” and the number of restraints where a young person sustained a “serious injury requiring hospital treatment”.

1.56 The categorisations of injuries in this table are those agreed by the Data Reference Group. “Minor injury requiring medical treatment” includes cuts, scratches, grazes, nosebleeds, concussion, substantial bruising and sprains where medical treatment is given by a member of staff or a nurse. Treatment could include cleaning and dressing wounds, providing pain relief, and monitoring symptoms by a health professional (eg in relation to concussion). “Serious injury” includes serious cuts, fractures or loss of consciousness. Treatment will reflect the more serious nature of the injuries sustained and may include stitches, re-setting bones, operations and providing overnight observation. Units report these figures to the YJB on a monthly basis.

1.57 The YJB intends to examine in more detail the factors that may influence the differences in rates of injury and is intending to set up a reference group to look at the issue. As well as overall practice, differences may also be influenced by the type of restraint method used and the circumstances in which recording takes place.

### Table 2

**INJURIES TO YOUNG PEOPLE RESULTING FROM RESTRAINT—APRIL 2007 TO JUNE 2007**

<table>
<thead>
<tr>
<th></th>
<th>Total no of restraints</th>
<th>Percentage of restraints leading to minor injury requiring medical treatment</th>
<th>Serious injury requiring hospital treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>STCs</td>
<td>716</td>
<td>6%</td>
<td>0</td>
</tr>
<tr>
<td>Secure Children’s homes</td>
<td>586</td>
<td>2%</td>
<td>0</td>
</tr>
<tr>
<td>YOIs</td>
<td>847</td>
<td>3%</td>
<td>1</td>
</tr>
</tbody>
</table>

1.58 The YJB also requires STCs to report all instances where distraction techniques are employed. As noted, distraction techniques are designed for use in dangerous or violent situations where a person is at serious risk of injury. Distraction techniques inflict a momentary burst of pain to the nose, rib or thumb to distract a young person who presents a danger to him/herself or others. Some establishments are reporting an increase in staff injuries since the use of distraction techniques has been reduced. This may be because it takes longer to being difficult or violent situations under control.
1.59 The graph below indicates a reduction in the use of distraction techniques over the reporting period from February 2006 (where 22 instances were reported) to June 2007 (where four instances where reported).

**Figure 4**

**USE OF DISTRACTION TECHNIQUES IN STCS—FEBRUARY 2006 TO JUNE 2007**

**BEHAVIOUR MANAGEMENT PROGRAMME**

1.60 Since 2004, the YJB has developed a new Behaviour Management programme bringing together work on this issue, with a dedicated programme manager in post since late 2005. The aim of our programme is to contribute to the safety of young people in the secure estate—from escort arrangements through to custody—by collecting evidence of what works and promoting effective ways to manage and respond to their difficult behaviour. We do this by:

- Promoting a culture in the secure estate that is child-centred, provides an expectation of positive behaviour and respectful relationships between young people and staff, and understands the diverse issues that young people face and how this may impact on behaviour.

- Contributing to an emerging evidence base in relation to both risks inherent in restraint, as well as promising approaches in managing difficult behaviour of young people. We work to ensure that restraint is used only as a last resort. This is made easier if other aspects of difficult or challenging behaviour are tackled.

- Supporting those managing the secure estate to develop policies, guidance and training to help staff deal with the difficult and challenging behaviour of young people.

1.61 All our work on behaviour management is brought together under the governance of a Behaviour Management Programme Board. We have also established a forum for directors of STCs, and a joint behaviour management programme board with the Prison Service to oversee the development of operational policy for YOIs. The key elements of the programme are outlined below:

- We produced the Code of Practice *Managing Children and Young People’s Behaviour in the Secure Estate* to ensure that establishments can put in place strategies for managing the behaviour of children and young people for whom they care. The code emphasises the importance of positive expectations of behaviour, and there is a clear understanding that secure establishments will have management systems and processes in place to ensure that there is a management commitment to dealing with challenging behaviour that places physical intervention at the end of a process that includes diversion, de-escalation and defusion. It recognises that angry and sometimes violent behaviour can be caused by the powerlessness felt by some young people in custody. Therefore,
good consultation, complaints and advocacy systems are at the heart of the code, as is the need to embed restorative justice approaches into all programmes designed to tackle challenging behaviour.

— We are currently undertaking a review of compliance against the Code of Practice for the second time. In July, establishments were asked to assess their compliance against the Code of Practice. This will be audited by YJB monitors to ascertain its reliability, which may result in establishments revisiting their assessments. The self-assessments will then be collectively analysed to assess overall compliance and identify common areas of non-compliance where additional guidance may be required, as well as promising approaches and emerging practice for dissemination.

— We are piloting alternative behaviour management techniques, including therapeutic crisis intervention in one STC. The therapeutic approach to crisis prevention and management is designed to reduce the need to rely on restraint. Staff are taught specific techniques to prevent and manage crisis situations, and are given specific direction on active listening skills, managing non-compliant behaviour, and averting a crisis.

— We have evaluated a restorative justice pilot at Ashfield YOI—a private sector establishment. Results were promising and we are now funding further work at two public sector YOIs to inform the possible roll-out of restorative justice across the secure estate.

— We are carrying out a project with the British Institute of Learning Disability to develop a way to assess the safety, effectiveness and social validity of methods of restraint. It is intended that a tool will be produced that establishments will be able to use to assess the various methods of restraint that are employed across the secure estate.

— We commissioned MORI to undertake a systematic literature review of the behaviour management field, including identifying possible triggers for challenging and difficult behaviour and promising approaches in managing behaviour. The report is currently out for peer review and will be published in the coming months.

— We will be establishing knowledge sharing forums for the secure estate where we will distil and share promising practice arising from the Code of Practice self-assessments, the MORI literature review and the pilots we are running. The forums will also provide the opportunity for practitioners to consider and debate key issues for the behaviour management programme, such as the use of single separation.

Youth Justice Board for England and Wales
September 2007

13. Memorandum from the National Children’s Bureau (NCB)

1.0 SUMMARY

1.1 NCB is opposed to the changes set out in the Secure Training Centre (STC) (Amendment) Rules 2007, which widen the circumstances in which physical restraint can be used to include the maintenance of “good order and discipline”. NCB believes that the term “good order and discipline” is insufficiently defined and therefore potentially confusing for staff and open to abuse. The restriction on the use of restraint to “risky” situations, as was the case before the introduction of the new rules, provided an essential safeguard. We believe the new rules are incompatible with the spirit of the Human Rights Act and the UN Convention on the Rights of the Child, and that they undermine the safeguarding requirement placed on governors of STCs by section 11 of the Children Act 2004.

1.2 NCB was commissioned by the Youth Justice Board to undertake a review of the use of physical intervention within secure settings for under 18 year-olds to help the YJB develop a more consistent approach across the secure estate. An offer by NCB to strengthen this review by undertaking interviews with staff and young people about the impact of restraint was declined by the YJB. The final report revealed a fragmented approach, with different criteria for both the use of restraint and the methods that could be used, and it identified an urgent need for an evaluation of the safety and effectiveness of restraint techniques.

1.3 NCB welcomed the Government’s announcement in July 2007 of a review of the use of physical restraint across the secure estate for children and young people. However, we would question why such a review should be limited to the secure estate when restraint techniques are used in a number of settings for children and young people (eg mainstream schools, special residential schools, children’s homes, psychiatric units, immigration removal centres, as well as secure settings). We, therefore, call for a review of the use of restraint across children’s services. It is clear from the debate surrounding the introduction of the STC (Amendment) Rules 2007 that such a review is urgently needed.
2.0 ABOUT NCB

2.1 NCB promotes the voices, interests and well-being of all children and young people across every aspect of their lives. As an umbrella body for the children’s sector in England and Northern Ireland, we provide essential information on policy, research and best practice for our members and other partners.

2.2 NCB aims to:
- challenge disadvantage in childhood;
- work with children and young people to ensure they are involved in all matters that affect their lives;
- promote multidisciplinary cross-agency partnerships and good practice;
- influence government policy through policy development and advocacy;
- undertake high quality research and work from an evidence-based perspective; and
- disseminate information to all those working with children and young people, and to children and young people themselves.

2.3 NCB has adopted and works within the UN Convention on the Rights of the Child.

2.4 In 2003, NCB was commissioned by the Youth Justice Board for England and Wales (YJB) to produce a report on the use of physical intervention within secure settings for under 18 year-olds. The purpose of the report was to describe and analyse the approaches to restraint in STCs, Young Offender Institutions and secure children’s homes to support the YJB in ensuring a more consistent approach.

3.0 UN CONVENTION ON THE RIGHTS OF THE CHILD

3.1 In its 2002 examination of the UK’s compliance with the UN Convention on the Rights of the Child, the UN Committee on the Rights of the Child expressed concerns about the use the physical restraint in residential and custodial institutions for children and young people, and in particular the numbers of children who had sustained injuries following restraint in a secure setting. The Committee urged the UK Government 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 [torture and deprivation of liberty] and 25 [periodic review of placement].”

3.2 In the Government’s most recent report to the UN Committee on the Rights of the Child (due to be examined by the Committee next year) the paragraph on the use of restraint in custodial establishments refers to the previous version of the STC Rules.

“Another area of concern is the use of restraint. The Youth Justice Board’s code of practice Managing Children and Young People’s Behaviour in the Secure Estate makes it clear that restraint should only be undertaken on the basis of a risk assessment that harm is likely to occur if a physical intervention is not employed. The YJB has set up a joint behaviour management/ safeguarding programme board with the prison service which will consider a number of policy areas impacting on behaviour management.” (Chapter 8, para 93)

4.0 THE SECURE TRAINING CENTRE (AMENDMENT) RULES 2007

4.1 The YJB has asserted that the change to the STC Rules is needed because of an incompatibility between the Criminal Justice and Public Order Act 1994—which says STCs have a duty to ensure good order and discipline and can use force to do so—and the STC Rules before they were amended—which said that force can only be used to prevent specified risks (harm to self, others, property; risk of escape; or incitement of others to do any of these). If it is the case that these are incompatible, it still remains unclear why the Ministry of Justice and YJB are not seeking to amend the 1994 legislation.

4.2 The YJB has suggested that the “good order and discipline” justification for using restraint is widespread. However, it continues not to be legal in secure and non-secure children’s homes, psychiatric settings and foster homes. Only prisons and schools can use this power.

4.3 NCB contends that the restriction on the use of restraint to “risky” situations is an essential safeguard; the term “good order and discipline” is not defined and therefore open to abuse. Staff will be left confused about when they can justifiably use force and young people will be unclear what is expected of them—other than to obey every staff order without question. This reduces the incentive to develop more effective approaches to the management of challenging behaviour—such as skills in de-escalating conflict.

19 Letter from Graham Robb, Interim Chair of the Youth Justice Board, to the Guardian, 21 June 2007 www.guardian.co.uk
20 Prison Service Order 1600: Use of Force
21 Under section 93 of the Education and Inspections Act 2006
and pro-social modelling. The return to a position where force is used to impose adults’ will on children is a move away from the spirit of the Human Rights Act and the UN Convention on the Rights of the Child. It also undermines the safeguarding requirement placed on governors of STCs by section 11 of the Children Act 2004.

5.0 NCB’S REVIEW OF THE USE OF PHYSICAL INTERVENTIONS WITHIN SECURE SETTINGS FOR UNDER 18 YEAR-OLDS

5.1 As stated above, the YJB commissioned NCB to undertake a review of the use of physical intervention within secure settings for under 18 year-olds to help the YJB develop a more consistent approach across the secure estate for children and young people. The final report revealed a fragmented approach, with different criteria for the use of restraint and the methods that could be used.

5.2 NCB was not asked to consider the safety or effectiveness of restraint techniques as part of this review. However, the final report did identify an urgent need for such an evaluation. NCB’s offer to support this work, by undertaking qualitative interviews exploring practice on the frontline, was declined.

5.3 It is worth noting here that the inquest into the death of 15-year-old Gareth Myatt—who lost consciousness while being restrained at Rainsbrook STC and later died in hospital—found that the “inadequacy in the response by the Youth Justice Board to the National Children’s Bureau Report as to the urgent need for the medical review of Physical Control in Care caused or contributed to Gareth’s death”.23

6.0 YJB CODE OF PRACTICE ON BEHAVIOUR MANAGEMENT

6.1 Following NCB’s report to the YJB, the latter developed a Code of Practice on behaviour management which included a section on the use of restraint. A fundamental principle of the Code was that restraint should be used only where there was a clear and specific risk—and never simply to secure compliance with staff instructions. Guidelines for “A system for restrictive physical intervention” include:

— “Restrictive physical interventions must only be used as the result of a risk assessment.
— Restrictive physical interventions must not be used as a punishment, or merely to secure compliance with staff instructions.
— The degree of physical intervention must be proportionate to the assessed risk”.

(page 11, bullets 10.2, 10.4, 10.9)

It seems disingenuous for the YJB to state that the use of restraint to maintain “good order and discipline” is compatible with this principle.

7.0 TWO CASES: GARETH MYATT AND ADAM RICKWOOD

7.1 The inquest into the death of Gareth Myatt in April 2004 found the following caused or contributed to Gareth’s death:

— That the safety of Physical Control in Care (PCC), and the Seated Double Embrace in particular, had not been adequately assessed before it was introduced.
— That the Home Office and Youth Justice Board failed to carry out a medical review of the safety of PCC, and the Seated Double Embrace in particular, before Gareth’s death.
— That the use of PCC at Rainsbrook was inadequately monitored by the YJB and by Rebound management (who managed the STC).

7.2 The inquest also highlighted the fact that not all staff members had a copy of the PCC manual, that training given to staff did not sufficiently cover the theory of “medical advice” and that the real dangers of Positional Asphyxia were not known to the trainers or national instructors.

7.3 Lancashire’s Safeguarding Children Board carried out a Serious Case Review into the circumstances surrounding the death of 14-year-old Adam Rickwood, who committed suicide in August 2004 while on remand in Hassockfield Secure Training Centre, and who had been forcibly restrained the day before including the use of a “pain distraction” technique. The Review’s report included the following recommendations relating to the use of restraint:

— That “issues around the use of all ‘pain distraction’ techniques used on children should be reviewed as a matter of urgency” (Recommendation xxvii)

23 Gareth Myatt Inquest: Jury Narrative Verdict www.gardenourchambers.co.uk/imageUpload/File/myatt%20jury%20narrative%20verdict.doc
8.0 Inquiry into the Use of Physical Restraint on Children and Young People within the Secure Estate

8.1 The Government’s announcement in July 2007 to carry out a review of the use of physical restraint across the secure estate is welcome. However, since that announcement, no further details around the terms of reference of the review have been provided. NCB would also question why such a review should be limited to the secure estate when restraint techniques are used in a number of other settings for children and young people.

9.0 recommendations

9.1 Within the secure estate, NCB calls for the use of restraint to be restricted to “risky” situations only, as was the case before the introduction of the STC (Amendment) Rules 2007. We also recommend that s.9(3) to 9(4) of the Criminal Justice and Public Order Act 1994 be amended to align with the original STC Rules.

9.2 NCB also supports calls—including those from the UN Committee on the Rights of the Child and in the 2005 Joint Chief Inspectors report on safeguarding children— for a review of the use of restraint across children’s services. It is clear from the debate surrounding the introduction of the STC (Amendment) Rules 2007 that such a review is urgently needed.

Dr Di Hart
Principal Officer—Youth Justice and Welfare
National Children’s Bureau
24 September 2007

14. Memorandum from Rebound

1. Rebound ECD was established in the mid nineties to focus on the education, care and development of young offenders and is a part of GSL (UK) Limited. Rebound ECD manages two purpose built establishments, Medway Secure Training Centre, which opened in April 1998 situated near Rochester in Kent and Rainsbrook Secure Training Centre which opened in July 1999 located just outside Rugby on the Warwickshire—Northamptonshire border.

The STCs were originally built to accommodate 40 young people. They were both expanded in 2002 to a capacity of 76. One of the STCs was further expanded in 2006 to encompass a Mother and Baby Unit and a dedicated young women’s unit increasing capacity to 87.

STCs are formally inspected by Ofsted (formerly CSCI) and these inspections may be arranged in advance or unannounced. The following quotes are examples of comments made by the inspectors in the reports which have subsequently been subsequently published:

“The STC is one of the best establishments in the whole of the English and Welsh juvenile secure estates”.

“We found a calm and positive attitude to the care and education of trainees at the centre”.

“A continuing culture of investment in staff through training, development and support”.

As part of its commitment to enhance its health and safety management systems Rebound achieved The British Safety Council 5 star award at both STCs and was awarded the Sword of Honour under the British Safety Council 5 star standard in recognition of its extremely high standards of health and safety throughout the organisation. Rebound is now one of the top 40 performing companies in the world that have obtained this accolade in 2006.

2. The Committee is aware that the Youth Justice Board for England and Wales (YJB), an executive non departmental body, is responsible for placing young people under the age of 18. In Rebound’s experience young people are allocated depending on the following criteria—bed availability, geographic location, age, vulnerability and other information received from the Youth Offending Team (YOT), which includes the index offence and previous history. As part of the “index offence” and “previous history” criteria, the YJB consider any known history of the young person being looked after previously within the secure estate.

Rebound has previously worked closely with the Home Office and now with the YJB and its professional advisors to ensure that its regimes and designs reflect, as far as possible, best practice in residential care.

The central purpose of Rebound’s Secure Training Centres (STCs) is to meet the YJBs objectives of preventing young people from re-offending.

Rebound has numerous key values identified in its Statement of Purpose which is the basis of what the STCs are committed to achieve and a cornerstone against which practice should be judged. The policies and aims of Rebound’s STCs are derived from the principles of child care best practice and reflect the Every Child Matters agenda:

— Stay safe.
— Be healthy.
— Enjoy and achieve.
— Make a positive contribution.
— Achieve economic well-being.

3. Rebound’s extensive experience as a service provider for child-care, ensures it has an in-depth understanding of best practice in employee selection. In addition, 50% of Rebound’s staff has 5+ years experience of working with young people.

Assessments and selection of staff follow precisely the principles and recommendations of “the Report of the Committee of Inquiry into the selection, development and management of staff in children’s homes, 1992—CHOOSING WITH CARE”.

All staff, residential supervisors, escorts and drivers, teachers, social workers, healthcare staff, maintenance, administrators, full time, part time, temporary, volunteers and students undergo a rigorous positive vetting process prior to appointment:

(a) validation of their employment history over a 10 year period or from a school placement if applicable;
(b) verification of all educational, professional and vocational qualifications;
(c) interviews with referees; and
(d) detailed police checks, relevant checks with government lists.

Residential staff, managers, teachers, social workers and healthcare staff have undertaken specified training and are in receipt of an Enhanced CRB certificate prior to formal certification and approval by the YJB.

All staff working directly with young people, eg residential staff, managers, teachers, social workers, healthcare, etc will not have access to them until they have formal certification and approval from the YJB and have successfully completed all the vetting, screening and security processes, are in receipt of an enhanced CRB certificate and undertaken and successfully completed a seven week Initial Training Course (ITC).

The ITC requires staff to participate in a variety of modules including first aid at work, child development, managing challenging behaviour, anti-bullying, searching, working with differences, cultural diversity, mental health and loss and bereavement.

4. Rebound prides itself in its application of good management practices and the commitment to training and development for all employees and achieving accreditation in Investors in People. Rebound’s policy is to actively promote management progression within the company for all employees who are capable and demonstrate aptitude.

Rebound offers excellent opportunity for staff to progress through training and development. This is shown by the number of staff who have achieved DipSW qualification, Diploma in Management Studies and MBAs. In addition staff have also undertaken specialist training such as the Professional Certificate in Effective Practice, Substance Misuse, Child Protection, Mental Health, Jigsaw, and training on working with sexual offenders, etc to enable staff to participate in a continuing development programme which will include them being encouraged to be fully involved in Rebound’s work with young people and to contribute to the effective operation of the centre.

Across the business there are 50+ qualified teachers, including education welfare officers, 15+ qualified nurses including mental health, psychiatrist and a psychologist. A number of staff are qualified in substance misuse. Rebound also has over 20 experienced and qualified social workers the majority of which have also worked in the local authority sector.

Staff are also trained in Physical Control in Care (PCC)—see below. This form of Restricted Physical Intervention (RPI) was developed and defined by the Home Office and is the only form of control that staff who have become Custody Officers can use.

The responsibility for approval and modification of holds and review of PCC transferred from the Home Office to YJB in April 2000. The YJB is now responsible for issuing instructions to STCs if and when any changes are made to PCC.

5. STCs look after young people aged 12–17 years (male and female) subject to a Detention and Training Order (Section 100 of the Powers of the Criminal Court (Sentencing) Act 2000 and also young people who have been remanded to the care of the Local Authority with a secure requirement under Section 23(5) of the
Children and Young Persons Act 1969. In addition, there are limited number of young people who have been sentenced at Crown Court for more serious offences under Section 90 or 91 of the Powers of the Criminal Court (Sentencing) Act 2000.

6. Rebound STCs tackle the most difficult problems facing juvenile justice. Breaking the cycle of crime in persistent offenders and reducing the inclination to commit crime is the primary aim of our programmes. The rationale for this is based on Crisis Theory (determined as the window of opportunity or a point in time where maximum impact can be achieved with the young person with regard to co-operation and change).

7. Managing challenging and violent behaviour is complex particularly when taking into account the mix of young people looked after in STCs. To fully understand the context in which it maybe necessary to physically restrain a young person and the anomalies within the powers of a Custody Officer, contract restrictions and regimes within all three sectors, it is important to understand the profile of young people that are looked after in STCs and the regime restrictions which operates within them.

8. The profile of the young people looked after in STCs is well documented but not well communicated or understood by audiences outside the immediate arena of child care. It is generally recognised that a significant number of these young people have had numerous local authority secure placements, have been diagnosed with a mental illness or mental health needs, have been out of education for long periods and have a range of complex behavioural problems that have been difficult to manage elsewhere. Indeed Lord Carlisle noted that many children and young people arrived in secure settings with a history of non-co-operation with authority and little understanding of respect of boundaries.27

9. The average length of stay in STCs (13 weeks) compounds the problems as this does not allow the young person to form positive trusting relationships with staff and have an investment in the regime. Distance from home and lack of YOT and family support also have an impact. There are a significant number of occasions when a young person has breached their order and is returned to the same establishment, often for a very short period of time, these young people are difficult to engage in the regime and can be a disruptive influence on other young people.

10. Resettlement still presents significant problems in managing young people’s challenging and difficult behaviour. Many young people have lost confidence in the system and too often do not know where they are going to live on release (often right up to hours before they leave). Indeed a significant number of young people are placed in bed and breakfast accommodation and this uncertainty can lead to episodes of displaced aggression.

11. Research into placements indicates that significant numbers (up to 92% of young people) placed into STCs have an index offence of violence, a previous offence of violence or self-report of violent behaviour. A significant number are now sentenced or remanded for very serious offences including murder and manslaughter involving knives and firearms and there is a prevalence of young offenders spread around the secure estate due to gang culture.

12. There has been a significant increase in the placement of young people whose behaviour is so extreme, violent or challenging to manage due to, for example, serious and persistent violence to other young people or staff or are awaiting a move to a secure mental health establishment. These young people are often too dangerous and violent to safely live with other young people and if they do they intimidate, bully and on occasions assault others. These young people cause significant difficulties for the YJB Placements Team in finding appropriate placements. They are often moved around the secure estate, and present so much risk that the YJB do not fill other beds around them to improve staffing ratios and safety which in turn can then cause further placement difficulty. STCs do not have resources and facilities to manage them safely with other young people.

13. There are a significant number of young people deemed too young or too vulnerable to move to prison service accommodation and too challenging to be placed in Secure Children’s Homes (SCH) who are able to refuse referrals. These young people are serving long sentences for violent behaviour often against other young people and who continue to exhibit this behaviour when placed in an STC.

14. The STCs also look after a number of older young males (aged 15 plus) who are deemed too vulnerable to be looked after in YOIs due to suicidal and self-harming behaviour. A significant number however are often physically aggressive, threatening to staff and bully and assault younger children. The complexity of managing their violent behaviour while keeping them safe from self-harm and protecting other young people presents significant challenges. The majority of young women are older on admission (85% 16+ on admission) and many have a propensity for self-harming behaviour.

15. All these factors add to the complexity of managing these young people and cause instability and often volatile and challenging behaviour. Most incidents that result in an RPI in STCs are spontaneous, staff have to make instant but measured judgments on how to respond to violent and dangerous behaviour. In those circumstances the principles behind corporate parenting are important to consider. Staff need to respond as “a reasonable parent” would respond to a young person demonstrating violent challenging behaviour, they would be putting themselves at significant risk, and this may require restrictive physical intervention.

27 The Carlile Inquiry. An independent inquiry by Lord Carlile of Berriew QC into physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes.
16. As stated above some of the young people placed at the STCs display particularly challenging behaviour and at times pose a risk to themselves and others. As a result, there may be occasions where young people are placed in their rooms to reflect on their actions and ensure they remain in a contained safe environment, thereby minimising the risk they may pose to themselves, other young people and staff. There may be occasions when it is necessary to physically intervene with a young person when staff have assessed that there is a risk of a young person injury themselves or others, seriously damaging property or are attempting to escape as described in section 18.

17. The STCs are committed to making every effort to avoid the use of physical intervention. Staff are equipped with knowledge, skills and attitudes which reduce the number of occasions when physical intervention might be necessary. It also provides alternatives to physical restraint and teaches the seriousness of making a decision to physically restrain a young person.

18. Restraint (known as Restrictive Physical Intervention (RPI)) is only used as a last resort and when all other methods of de-escalation not involving the use of force have been exhausted. RPI will only be used where necessary for the purpose of preventing a young person from (a) escaping from custody, (b) injuring him or herself, (c) seriously damaging property or (d) inciting another young person to anything specified in (a)–(c) above and only when no alternative methods to prevent such events as outlined is available.

19. In examining how RPI is used in the different sectors the Committee will be aware that the method of RPI used in YOIs is “Control and Restraint” (C&R), which is comparable to that used in prison. C&R involves “pain compliant” holds and always involves three members of staff.

20. It has been highlighted and is worth noting that in SCHs, a range of alternative restraint methods are used and these remain unregulated. SCHs appear to have some reluctance to agreeing to a common framework for monitoring training or for methods used. Indeed, YJB reports indicate that there a plethora of restraint methods used across areas for which government has responsibility. These include psychiatric units, schools, children’s homes and private care homes as examples. Prison, immigration and police services also use restraint techniques involving children and young people.

21. SCHs are operated by local authorities licensed by the Department of Health. The relevant local authority will determine the method of RPI to be used. Some have “a decking policy” which involves restraining a young person to the floor.23 There are misconceptions about pain compliant holds in SCHs. Many of the methods used in SCHs are not pain compliant when the hold is first applied but if there is resistance against the hold they immediately become pain compliant in operation. It is often claimed that methods of RPI used in SCHs are accredited, this in fact is a misnomer. It is the training that is accredited not the holds themselves. The holds have not been medically approved for use on young people.24

22. PCC holds were originally approved by an expert panel that was bought together by the Home Office prior to the opening of the first STC in 1998. The panel comprised of a Consultant Forensic Psychiatrist, President of the British Orthopedic Association, Medical Director of Optimum Health Service, Head of Prison Service and members of the Social Services Inspectorate. The panel was convened to ensure that PCC methods of restraint were safe for use on a young person aged 12–15 years. The panel found PCC not to be pain compliant, for example, it did not inflict pain on a young person by using holds such as a “wrist lock”, which by its very nature inflicts pain, nor do the holds place a child on the floor. PCC holds differ from the C&R techniques used in YOIs and Prisons which are pain compliant and pain is inflicted. In addition, with C&R techniques in certain circumstances handcuffs maybe used.

23. As stated previously all staff employed by Rebound are fully trained in PCC techniques. During the ITC staff must successfully complete and pass an initial five-day intensive PCC course. In order to maintain the Home Office certification as a Custody Officer staff are required to have annual refresher training which is a one-day course delivered by a PCC instructor. Rebound staff undertake PCC refresher every six months which is above contractual requirements.

24. Initially the HM Prison Service trained all staff employed by Rebound in PCC. The Prison Service then devised a PCC Instructor’s course which was approved by the Home Office. Selected candidates from Rebound undertake a two-week training course which is delivered by the Prison Service. Once the candidates have completed and successfully passed the course they are accredited by the Prison Service to train others in PCC. The instructors have an annual week’s refresher training by the Prison Service to maintain their accreditation. They follow the PCC manual which is written by the Prison Service and approved by the YJB.

25. There are three levels of interaction taught on both the initial five-day PCC course and subsequent six monthly refresher courses. Control by simple physical presence, holding or touching a young person to persuade them to comply, or by diverting their attention. These methods are used as an attempt to control a young person’s behaviour before physical intervention is applied.

23 Report to the Youth Justice Board on the use of Physical Intervention within the Juvenile Secure Estate, National Children’s Bureau.
26. As stated in paragraph 3 members of staff are instructed that only after the methods referred to above have been exhausted should physical control be used. Staff make an assessment as to the level of physical intervention to be used which may be Phase 1—one member of staff, Phase 2—two members of staff or Phase 3—three members of staff. Individual risk assessments and behaviour management issues are therefore effectively addressed at the earliest opportunity.

27. In order to minimise the risk to all involved staff attempt to consider when the time is right for such confrontation to take place. This risk assessment considers the following principles: Staff member’s own physical ability, physical ability of the young person, minimum intervention required to resolve the situation, the availability of other staff, the presence of other young people and the environment. This risk assessment is taught on all PCC courses and the documentation on this is in the PCC Manual. Further to this and more importantly for the safe well-being of the young person, staff consider the information obtained from Section 1.3 of the Initial Custodial Reception Assessment documentation eg medical conditions which may be affected by the use of some techniques. An initial education assessment is also undertaken which measures the learning styles of the young person. This assessment is circulated to staff to inform them how to best communicate with the young person. Healthcare is also involved in the initial screening on admission. In addition a scoring mechanism is also completed which could lead to a possible referral to the Substance Misuse Team. Medical provision is provided at the STCs. Nurses are on site between 0730—2230 each day and are also on call 24 hours a day. In addition, a GP sees all new young people within 24 hours from admission.

29. Following the use of any physical intervention a comprehensive incident report form is completed by all involved. This report documents the criteria for physical intervention, techniques used, duration of the PCC, any medical treatment required following the intervention, along with a record of the antecedents leading up to the intervention, what happened during and then what happened afterwards. This report also evidences techniques of de-escalation in trying to try and prevent the use of physical intervention. The report is passed to the on-site YJB Monitor.

30. It is custom and practice for a nurse to attend a PCC incident, in addition, a qualified member of staff from the healthcare department sees every young person within 30 minutes of the use of a physical intervention. This process enables the young person to discuss any injuries they may have sustained which are then documented on a body map. Nurses also attend the living units twice a day where such issues can also be raised and documented. Recording mechanisms undertaken at the STCs is far more comprehensive and detailed than in any other juvenile secure establishment.

31. All staff involved in the incident are debriefed and a debriefing log is completed by staff which evidences any injuries sustained to staff and any actions to be undertaken as a result of reviewing the techniques used including attempted de-escalation methods and any lessons learnt.

32. Following every physical intervention a Restorative Justice Intervention (RJI) is undertaken with the young person. This process enables staff to review the incident with the young person to consider what happened and why and what can be learnt from this incident. An action plan is devised to prevent further incidents occurring. This action plan is then reviewed by a Residential Service Manager with the young person to consider its effectiveness and future coping strategies for dealing with conflict situations. This process ensures the young person’s voice and view of what happened is taken into account.

33. A daily review of all physical interventions is undertaken by the Duty Director and a Duty Operations Manager or Residential Service Manager. This is to enable a process of reflection and ensure best practice has been achieved.

34. Any allegations relating to RPI incidents are passed to the Local Safeguarding Children Board Child Protection Unit who investigate any allegations independently.

35. There have always been anomalies between the training of PCC and its use against the criteria set out in STC Rule 38. As referred to in paragraph 15 PCC has three phases—phase 1—holding/de-escalation technique involving one member of staff, phase 2—involving two members of staff and phase 3—involving three members of staff. Phase one is a low level intervention which involves, for example, the staff member putting their arm around the young person to lead them away from an incident. Because this is classed as an RPI hold it has always been recorded whereas this intervention would not be recorded as such in any other institutions.

36. The definition of what is described as an RPI has more recently been defined as “a hold that overpowers the young person”, however, some RPIs that involve two staff leading a young person away from an incident do not “overpower”.

37. It is interesting to note that the Commission for Social Care Inspection Report for Rainsbrook STC 2005 noted that “managers expect staff to complete the relevant reports and consider, as a use of physical control, the placing of an arm around a young person and ‘leading’ them away from a situation or, for example, moving them towards the door if they are refusing to return to the unit from activities. If the young person moves without resistance with the staff member this would be recorded as a ‘single embrace’ PCC hold. When a young person moves with the staff member in this way it would not in other establishments be considered a physical restraint. However, managers at Rainsbrook felt it was important to record every situation where a staff member ‘placed hands’ on a young person, even in this ‘directive’ way.”
38. Phase one PCC holds would in other circumstances as defined by the Guidelines on Permissible Forms of Control in Children’s Residential Care—Department of Health 1993 Section 5 be viewed as “touching or holding” a young person to persuade him or her to comply. This should be seen as persuasion rather than an attempt to enforce control and is therefore distinct from an RPI. This intervention could be merely taking a young person by the arm to lead him or her away or laying hands on shoulders to gain attention.

39. The majority of young people looked after in STCs respond well to boundaries and consistency. Rewards and incentive schemes work with most young people and this encourages them to behave well and make positive use of their time. This is demonstrated by a significant improvement in young people’s education attainment and general behaviour. Statistics from our STCs show that a significant proportion of young people do not become involved in any incidents do not need to be singly separated or require RPI during their time in custody.

40. When examining the levels of RPIs used in STCs as opposed to other settings a number of issues need to be seen in context and taken into account, not only regarding the complexity of the young people that are being looked after but also the different methods of reward, sanction and control that can be used in each setting, including the use of single separation which is defined as the removal of a young person to a locked room or bedroom when they are separated from the main group.

41. It is equally important to note that regimes vary from different establishments, in STCs young people are active from 7.30 am to 9.30 pm and receive 25hr taught education per week, 52 weeks of the year. This is very different to a YOI where time out of rooms is less prescriptive as is access to education, many of which can be “hot-spots” for young people who are being challenged to be actively engaged in a regime that addresses their educational needs and their offending behaviour.

42. The range of sanctions varies from establishment to establishment. No adjudication is undertaken in STCs and rewards and sanctions would be similar to those in SCs. Rebound’s rewards and sanctions are approved by the YJB and reviewed annually. Young people have input to the review. There are significant anomalies between the amount of time a young person can be singly separated for disruptive behaviour in an STC in comparison with a SCH. For example, within an STC single separation is limited to three hours in any 24-hour period, whilst in SCHs they have an initial limit of up to five hours and can singly separate a young person up to twelve hours in any 24-hour period, with managerial approval.30

43. A significant number of RPIs in STCs are used to keep young people safe, particularly those who self-harm. It may be necessary to hold a young person to remove items from them for which they intend to harm themselves. There is an increase of vulnerable young people admitted to STCs who are on suicide or self-harm (SASH) conditions on admission.

44. The Committee will be interested in “good order and discipline” and particularly the extension of the use of RPI to maintain good order and discipline within STCs.

45. There are clear links between good order and discipline in a custodial setting and in most social situations, be it in the family home or school. However in most situations good order is produced by cooperation of people involved in the situation. There is a presumption that individuals involved in such situations will respond in an acceptable way through his own choice, in custodial settings such as STCs this is not always the case.

46. Young people who enter Rebound’s establishments will as a result of their previous learning, criminal history or social deprivation they have suffered previously may resist and work against good order and personal discipline and as a consequence regimes that have clear expectations may be resisted in the first instance. Most young people do benefit from consistency and in the main respond given adequate time. This is really the balance where a young person understands both what is expected of him or her and why those expectations are held. It is the balanced state in which the needs of the individual and not in conflict of the needs of the group and the well being of the group does not conflict the needs of the individual within it.

47. There will be situations where young people will attempt to disrupt the regime of any institution which has a detrimental affect on group living, for example, this may be a refusal to go bed at an allocated time, which affects the safety and supervision of others, refusal to come in from activities which prevents other young people from gaining access to exercise clubs and groups. This is particularly important when there are numbers of young people in institutions who cannot mix, which is highlighted in security intelligence reports, particularly as there is an increase in gang culture and placement of co-offenders.

48. In such circumstances the problem of why the young person is failing to respond to normal staff requests will be discussed. This discussion will also look at whether the young person has any specific problems in abiding by normal rules and conditions. If the young person fails to respond to reasonable requests they will be reminded of the consequences of such behaviour and how this may affect their rewards or sanctions. In these instances it will be necessary for staff to lead the young person by the arm or shoulder or guide them to persuade them to comply as referred to in paragraph 26.

30 SAN Good Practice Guidance, The Use of Single Separation in Secure Children’s Homes (England and Wales) P5 paragraph 7.7
49. The particular circumstances in which persuasion is used to maintain good order and discipline is exactly the same as in SCHs.

50. Currently the PCC manual and STC Rules make this a particularly grey area and open to legal interpretation. Therefore the changes to the STC rules providing clarification in this regard is welcome.

51. In conclusion the young people being looked after in the secure estate will continue to present significant challenges. The secure estate will continue to look after young people with severe mental health problems and offences of violence which will increase young people’s propensity to act violently in certain situations.

52. It is in everybody’s interest to reduce the amount of RPIs within custodial settings. It is by definition inherently dangerous regardless of the safeguards that are put in place. It is distressing for those that witness it or experience it and it is not something that staff wish to do. Professional staff in the STCs wish to work proactively on treatment orientated regimes to make a difference to young people’s lives. However, as discussed earlier in this submission the profile of the young people that the STCs look after is well documented with a significant proportion of young people diagnosed with mental health issues and therefore it is recognised that there will be occasions where RPIs will be necessary to safeguard either the young person themselves or other young people or staff. Reductions in RPIs is further exacerbated by population pressures across the secure estate, problems within other establishments, gang culture and mixing co-defendants, etc.

53. Rebound firmly believe that It is right in all such circumstances when there is an RPI that there should be absolute openness, transparency and scrutiny on each occasion it occurs. Rebound have in place robust reporting and auditing mechanisms regarding RPI. All RPIs are discussed and dissected daily at the STCs morning briefing meetings and also at the monthly Strategic Monitoring Monthly Information Meeting where a multi-disciplinary cohort of staff review all incidents and report on lessons learnt and practice issues, etc. In addition, the on-site YJB Monitor receives a copy of all the incident reports and statistical data. The STCs are also inspected annually by Ofsted and also are subjected to unannounced inspections. The YJB also contract with “Voice” an independent advocacy service who visit the young people at the STCs weekly.

54. Rebound’s judgment is that we need to consider managing young people in secure settings similar to how we manage risk in the community based on a “risk management assessment”. We need to become more sophisticated in developing specialist units and regimes for those young people who fall outside of the “norm” and whose behaviour is most challenging and difficult to manage.

55. Following the tragic death of Gareth Myatt at Rainsbrook STC in 2004 the double embrace (seated) was withdrawn from use by the YJB. Rebound still have significant concerns about the safety of PCC both for young people and the staff. The physical size of many of the young people now looked after in STCs and their height and weight ratio in comparison to the majority of staff (60% of staff are women) means that it is sometimes not possible to put on PCC holds. It is also difficult to safely apply the head support. Within the STCs there are three distraction methods, thumb, nose and rib which are permitted which only use pain to regain control of potentially violent situations or to rescue or break from attack, for example, a thumb distraction may be used if a young person was armed with a weapon and would not release it. Rebound as part of the development of physical restraint in STCs examined the use of distraction techniques and their effectiveness and made the decision internally to remove the nose distraction technique, however, this has resulted in prolonged periods of PCC and young people taking themselves to the floor in order to free themselves from the holds.

56. Rebound supports the holistic review of behaviour management and in particular PCC to ensure it is “fit for purpose” to maintain the safety of young people and staff. Within Rebound’s STCs we have resisted the use of handcuffs even though they are used in the other two centres run by different operators as we are yet to be convinced of the safe mechanism to apply them in an RPI situation.

57. Focus groups held with the young people has given us some interesting insight into their views. Those young people who have been detained in YOIs and in some SCHs advise us that pain compliance has acted as a deterrent to incidents of RPI. Conversely some young people, particularly those who have been abused or are sex offenders, have informed us that they get a form of “comfortable gratification” by being held by staff in non painful holds.

58. Finally, on a positive note, Rebound’s STC have been working closely with the YJB on further training for staff in managing challenging behaviour. Rebound has completed the YJB’s Code of Practice on Behaviour Management of Young People in the Secure Estate which has been audited and scored very highly.

In addition one of Rebound’s the STCs is working with Youth at Risk who are a charity dedicated to working with young people are working in partnership.

Youth at Risk design, develop and deliver social intervention programmes which enable some of society’s most alienated youngsters to accept responsibilities and transform their lives.

All Youth at Risk programmes are designed to engage with young people to make a deep and lasting difference to their lives. Their programmes are aimed at delivering innovative personal development training programmes aimed at getting to the very heart of the reasons why troubled and troublesome young people are so disaffected with life.
The training encompasses various modules and is an eclectic mix of methodologies that include: Transactional Analysis, Behaviour Psychology, Group Coaching Models, Reflective Therapy. Rebound’s other STC is piloting a behaviour management strategy on Therapeutic Crisis Intervention (TCI).

We very much welcome the YJBs decision to have an all encompassing view on RPI across the secure estate.

I am happy to give evidence to the Committee in person.

Paul Cook  
Director Children’s Services  
Rebound  
24 September 2007

15. Memorandum by the Royal College of Psychiatrists

EXECUTIVE SUMMARY

The Royal College of Psychiatrists recognise that there will be situations where, as a very last resort, control and restraint is necessary in secure settings (juvenile justice centres, secure care and secure adolescent psychiatric units). We believe that the current variations in the practice of control and restraint across secure settings cannot continue. The Government must develop clear guidelines on the use of control and restraint. It must ensure, and take steps to facilitate, increased training on the use of control and restraint for all staff working in secure settings and improvements in staffs’ understanding of the physical, emotional and psychological development of children. It must also secure full and improved monitoring of the situations where control and restraint has been used.

INTRODUCTION

The Royal College of Psychiatrists has serious concerns about the Secure Training Centre (Amendment) Rules 2007 (2007/1709) which could potentially infringe the rights and well being of children and young people in secure training settings. The College believes that it is important that the Joint Committee’s inquiry fully examine the compatibility of the Rules with international human rights standards.

The College does not underestimate the degree and difficulty of the task facing those professionals who work in secure accommodation. We accept that there are circumstances in which children need to be detained in secure accommodation and there are occasions where the degree of risk they pose to themselves and others is such that they will, as a very last resort, need to be controlled and restrained.

The Carlisle inquiry (2006) highlighted, that there were wide variations in the form and use of control and restraint across secure settings and that, in some cases, they were used inappropriately and too often.

In recent years, the College has worked closely with the Children’s Commissioner to establish how we can respond more effectively to the needs of children and young people with mental health problems and/or learning disabilities in custody and justice settings (see Appendix 1, note of joint meeting). We have jointly convened a series of meetings with other concerned non-governmental organizations, practitioners and policymakers.

THE WAY FORWARD

Guidelines

The College believes that the government must take steps to develop guidelines on the use of control and restraint in order to ensure that it is used appropriately and consistently wherever children are held in secure accommodation. We believe that the following must inform those guidelines:

Continuing needs based assessment of a child, including the nature and degree of behaviour placing the child and others at risk of serious harm. This must be accompanied by systematic repeated risk assessment to inform the planning and delivery of safe care. This should result in a pathway of care whereby the child professionals working in secure accommodation have a clear and unambiguous understanding of how and in what circumstances a point has been reached where control and restraint is to be used.

An unambiguous, consistent understanding of what constitutes “challenging behaviour” as this currently has different meanings across secure settings and among staff in those settings. Staff also need a better understanding of the range and nature of emotional, psychological, and social drivers that may lead to a child behaving in this manner.
A clear evidence base for the range of strategies used by secure setting organisations to prevent such incidents occurring. If there is an escalation in risk to others, all forms of defusing this situation must be understood by all staff working in the setting and importantly, understood by the child themselves. For this to be understood by the child, explanations of how a particular establishment works and what is expected of them has to be given in a manner that is commensurate with the chronological age of the child and the child’s level of psychological, emotional and social understanding. A one size fits all approach will not work.

Need for systematic monitoring of the use of control and restraint

The College is aware that a great deal of information is recorded following a serious incident in a secure setting. However, there is a lack of clarity about whether the criteria for recording untoward incidents are consistent across secure settings. The nature of the information currently recorded needs to be examined to determine how reporting can fulfill its purpose, ensuring that it is useful in informing staff, regulators and inspectors about when and how control and restraint may be necessary.

We believe that more rigorous analysis of control and restraint incidents, and more consistent recording across settings, would help organisations learn more about how potentially difficult incidents can be diffused and when control and restraint should be used.

Training

The Government must provide more appropriate, competency based training for all professionals working in the range of secure settings. In order to improve the practice of control and restraint in secure accommodation, and to help children control their anger in aggression, government must listen to the views of children and young people detained in such accommodation and to the views of their families.

The College hopes that there would continue to be early, preventative interventions that result in fewer children being held in custody.

September 2007

APPENDIX 1

Responding to the needs of Children and Young People with Mental Health Problems and/or Learning Disabilities in Custody

Background Notes for Meeting on 27 February 2007
Royal College of Psychiatrists and the Children’s Commissioner

INTRODUCTION AND OBJECTIVES OF THE MEETING

England has one of the highest rates of incarceration of children and young people in Europe. The rising number of children and young people in custody was recently described as “little short of a national scandal” by Jon Fayle, the former Head of Policy for the Youth Justice Board31. The Children’s Commissioner is of the view that the number of children and young people in custody is too high, that incarceration is of no benefit to them and that urgent action should be taken to reverse the current situation of increasing numbers of children and young people being placed in custody.

The very high numbers of children and young people with mental health problems within the youth justice system is of particular concern. For many of these young people, their mental health needs are met inadequately or not at all and their problems inevitably continue on leaving custody. In addition there are some young people with serious developmental disorders and/or challenging behaviour for whom current provision is insufficient. A small number of high profile cases in recent years have highlighted the serious consequences for these young people. Since 1990 29 young people under the age of 18 (all young men) have died in custody. All save two deaths32 were classified as “self-inflicted” and died by hanging.

In the light of these concerns and recognising that a comprehensive and co-ordinated approach is essential, the Royal College of Psychiatrists and the Children’s Commissioner have convened this meeting in order to facilitate discussion on the areas of concern and how to address them. It is of course recognised that there is a great deal of work in hand with various research and pilot projects being commissioned in order to improve mental health services for children and young people in custody, for example the development of a mental health care pathway in the juvenile estate and the introduction of an integrated health screener (which is due to be available by end of 2007). It is essential that such work is co-ordinated in order to ensure a coherent approach to the development of policy and practice as well as the most effective use of limited resources. It is not clear whether has yet been achieved. Furthermore, it is not

32 The inquest into the death of Gareth Myatt who died (aged 15) on 19 April 2004 after losing consciousness while being restrained by staff at Rainsbrook Secure Training Centre was opened for formal evidence on 15 February 2007.
clear whether such work will address the concerns about the adequacy of care and treatment for those children and young people in custody who have severe mental health problems or serious developmental disorders and/or challenging behaviour.

The focus is on those children and young people who are within custodial settings but there are also questions as to why they ended up in custody and what support they receive on their release. These must also be addressed if effective and sustainable solutions are to be achieved. This note has been prepared to assist the discussion.

The objectives of the meeting are therefore to:

- Discuss whether, and if so how, we can more effectively address the needs of children and young people in custody who have mental health problems and/or learning disabilities.
- Consider how the range of agencies involved in this area can work together and co-ordinate our activities so that we can ensure that the limited resources available can be used to the greatest effect.
- Consider what specific role the Children’s Commissioner could take in order to “add value” to the work of other individuals and agencies working in this area.

Set out below are some areas of concern identified through an initial scoping review of relevant literature carried out on behalf of the Children’s Commissioner. Finally, the note suggests some questions for discussion and examples of work that could be undertaken.

What are the problems?

There is a high prevalence of mental health problems and/or learning disabilities in children and young people in custody.

For example, the National Service Framework for Children, Young People and Maternity Services: The Mental Health & Psychological Well-being of Children and Young People Standard states that at least 40% of young offenders have a diagnosable mental disorder. A report published by the Youth Justice Board (“the YJB report”) found that a third of the 301 young offenders participating in the research had a mental health needs. One in five young offenders were also identified as having a learning disability.

Appendix 1 is a briefing by Sue Bailey on prevalence rates of mental disorders. This notes that the rates vary widely by study. In relation to psychiatric disorders in juveniles in custody, the rates range from more than 50%–100%. This is an area requiring further research.

Too often, mental health treatment is lacking for those in need in custodial settings.

The YJB report and a report of a study commissioned by Prison Health to map the mental health interventions provided in youth offender institutions (YOIs) identified a range of significant barriers to ensuring an appropriate response to the mental health needs of these children and young people. Common concerns arising from these and other reports are as follows:

Problems in identifying mental health needs

Lack of understanding of mental health problems affecting young offenders: For example a poor understanding of mental health issues and a “lack of recognition that children’s mental health is everyone’s business”.

Inadequate assessments: The YJB report found that the single most important factor for unmet mental health needs was inadequate screening and therefore under-recognition of their needs. This accounted for 78% of the numbers of young people with unmet need.

Problems in joint working

Often dependent on personal contacts: This applies to obtaining psychiatric reports (YOTs), the provision of mental health sessions (secure settings) and arranging for assessments to be undertaken (YOTs).

Barriers to multi-disciplinary working: Major barriers to high quality communication between professionals and agencies include a lack of understanding about roles and responsibilities, different statutory requirements, “and interfaces dominated by written rather than verbal communication.”

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33 Department of Health and Department for Skills and Education, October 2004, paragraph 2.7: http://www.dh.gov.uk/assetRoot/04/09/05/60/04090560.pdf
34 Mental Health Needs and Effectiveness of Provision for Young Offenders in Custody and in the Community, YJB, 2005 http://www.yjb.gov.uk/Publications/Resources/Downloads/MentalHealthNeedsfull.pdf
36 YJB report, 35
37 The Royal College of Psychiatrists has just completed a scoping group report on how in the future psychiatrists can work with colleagues to provide timely and appropriate reports.
38 YJB 2005, 16
Problems of joint working at a national level: The relevant legal and policy framework is complex, involving a range of agencies responsible for areas such as health, social care and education. This must be reflected in joint working approaches at national as well as local level (i.e. good inter-departmental communication and joint working at a strategic level). However, it is not clear that all relevant government departments are involved sufficiently in the necessary strategic planning on how to address the needs of children and young people in custody who have mental health problems.

**Difficulties in accessing services**

Issue of equity: There is a general concern that children and young people in the juvenile secure estate receive a lower standard of care, or are less likely to access treatment, than their peers in the community.

Problems with referrals: Staff from YOIs worry about identifying mental health problems when they were unsure whether there were any appropriate services or how to access them whereas CAMHS staff are concerned "about the impact that the referral of young offenders with mental health problems would have on a service that is already overstretched and struggling to provide a service for those on their waiting list."39

Problems in providing mental health services within the secure estate: The Prison Health report found a lack of specialist mental health clinicians with dedicated time and interest within the YOIs. The YJB report found that in many secure estate institutions, provision was dependent on individual mental health professionals with a personal interest in the area and therefore continuous provision was vulnerable to changes in personnel and priorities. Models such as Tier 3 in-reach services are one of the options being tested.

Difficulties in delivering appropriate interventions: For example there is a lack of appropriate intervention packages available and resource or capacity problems in delivering available interventions.

Key gaps in the interventions available: For example interventions for children and young people who have committed sex offences, those with self-harming behaviour, those with severe learning disabilities (including autism) and services for 16–17 year olds.

Difficulties in establishing continuity of care: “The YJB report noted that continuity of care was a frequent problem, although the use of the Care Programme Approach (CPA) in one secure estate had minimised the barriers to providing continuous care.”

Lack of support for staff and need for staff training: support is particularly important following a major incident.

Lack of evidence on effective interventions: Research is underway into alternatives to custody, including multi-systemic therapy and multi-dimensional treatment foster care, but it will be some time before these models could be rolled out.

**Long delays in accessing in-patient mental health services**

The Prison Health report highlighted serious and widespread concerns of staff in YOIs about working with severely distressed and unwell children and young people who staff felt should be in hospital rather than prison. YOIs reported extreme delays in obtaining assessments by psychiatrists and then further delays in finding hospital beds for these young people (ranging from six months to nearly two years). The only two sites that did not experience severe delays in accessing beds had good links with a nearby Forensic Adolescent Unit.

The Howard League for Penal Reform has also raised concerns about the serious delays in transferring children and young people with severe mental health problems to mental health facilities where they can receive appropriate care and treatment. As a result of representations by the Howard League, the Home Office has agreed to hold an investigation into the care and treatment of a young woman ("SP") while in custody at a YOI. SP had severe mental health problems and was eventually transferred to a psychiatric hospital.

**Insufficient mental health facilities?**

Is it generally accepted that there are an insufficient number of places for young people in custody who need in-patient treatment for their mental health problems?

The National Specialist Commissioning Advisory Group (NSCAG) is responsible for commissioning the national in-patient Secure Forensic Mental Health Service for Young People (SFMHS for YP). Currently there are four units with a total of 68 beds within this service. (Another 20 bedded unit is due to be opened in 2008.) There are also plans to commission a 10 bedded unit for young people with learning disabilities.) While precise figure for the number of beds required has not been proposed, a report prepared by Zarrina Kurtz for NSCAG in January 2006, on the needs of young people for secure forensic mental health services,

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39 YJB report, 22
indicates support for the suggestion that the planned capacity of 88 beds is not enough (“the NSCAG report”). The report notes the wide variation in the estimates of young people who would need admission to the NSCAG service (204–1,256). It concludes:

“Evidence to assess the level of need for the numbers of young people who may require the SFMHYP service is complex but supports the view that the current planned provision of 88 beds would be fully utilised and is unlikely to meet the requirement. The evidence is supported by known levels of current demand.”

In addition to the 88 places in the secure forensic units, the NSCAG report notes that there are 54 “adolescent” units, predominantly for those aged 12–18 years, with at least one unit in every region of England and Wales. According to figures from the CAMHS Mapping 2005 there were 680 commissioned beds and 621 available beds in 2005. However as Pushed into the shadows: young people’s experience of adult mental health facilities highlights, young people are still being placed on adult wards, often due to problems with local in-patient CAMHS being full or unavailable due to staffing shortages and a lack of age-appropriate emergency in-patient resources.

**Issues of concern extend beyond care and treatment in custody**

Although the initial literature review carried out on behalf of the Children’s Commissioner did not extend to these issues, it is clear that there are also serious concerns about how children and young people end up in custodial settings and the lack of support made available to them on their release from custody. These issues would also need to be addressed in any work to improve the way in which the needs of children and young people with mental health problems/learning disabilities in custody are responded to appropriately. For example, court dispersals and finding alternatives to custody on sentencing would need further consideration.

**Basis for custodial sentence:** There are a range of concerns such as:

- Anecdotal evidence suggests that the decisions whether a child/young person should be placed in a Local Authority Secure Children’s Home (LASCH) or Secure Training Centres (STC) or a Young Offender Institution (YOI) can be arbitrary.

- The Royal College of Psychiatrist’s report Child Defendants, March 2006 raises concerns in relation to children and young people as defendants.

- The YJB report highlights pre-sentence issues—that there is a problem in being able to “commission and receive medical legal psychiatric reports within specific timeframes” (both for those trying to commission and those asked to provide them).

**Resettlement issues:** For example:

- Both the YJB report and the Prison Health Report raised concerns about the lack of continuity of care.

- The Howard League published a report in 2006 which highlighted that “local authorities are systematically failing to provide suitable accommodation and support for vulnerable children leaving custody”.

**QUESTIONS FOR DISCUSSION**

This note refers to both children and young people with mental health problems and children and young people with learning disabilities. However the needs of these two groups are different. Furthermore, the needs and severity of children and young people within these two groups will vary greatly and a wide range of services will be required to meet their needs. At the extreme end of the spectrum there are serious concerns about children and young people who engage in serious self-harming behaviour but who remain in custody.

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40 The reasons for the variations “is due to number of differences between the studies upon which the figures are based; chiefly, the geographical area from which the study populations came and the definition of the population of young people at risk according to age, sex, and problems.”

41 Zarrina Kurtz, “The needs of young people for secure forensic mental health services as currently commissioned by NSCAG” January 2006 http://www.dh.gov.uk/assetRoot/04/13/40/94/04134094.pdf

42 http://www.camhsmapping.org.uk/2005/reports/15509FINAL.pdf

43 Children’s Commissioner, January 2007. Available at: https://www.childrenscommissioner.org/documents/Pushed%20into%20the%20shadows%20report%20final.pdf

44 At 17


46 There is also the definitional problem with learning disabilities/difficulties. This is an area which has been identified as requiring further research (the YJB report recommended that further studies were carried out “to establish the neuropsychological deficits” specifically whether young offenders have a higher rate of learning disabilities or whether low IQs are due to lack of educational opportunities.)
with inadequate care and treatment, in some cases with dire, if not fatal, consequences. However it is also of concern that the needs of any child or young person with mental health problems, developmental disorder or challenging behaviours are not met adequately or at all.

The following questions attempt to reflect the complexity of the issues but also guide discussion on what can be done to effect positive change.

**Should we consider the issue from a broad perspective and ask the following question?**

“How do we ensure that the health, social care and educational needs for children and young people with mental health problems and/or learning disabilities who happen to be in the youth justice system at a particular point in time are met in the same way as any other child or young person?”

**Is there a need for a fundamental review of the needs of these children and young people?**

**How can co-ordination of work in this area be improved both locally and nationally?**

**How can agencies work to develop models that help to keep children and young people out of custody in the first place? (For example multi-dimensional treatment foster care.)**

Examples of possible future work:

These include the following:

- A thematic review of the needs of children and young people with mental health problems and/or learning disabilities similar to that of the thematic review for adults being undertaken by HMIP?
- A review of the situation for children and young people in secure accommodation of all types. This could consider areas such as the relevant legislative framework, mental health and health input into LASCHs, SCTs, YOIIs etc; the mix of offender and “welfare” populations; the persisting interface issues between mental health services and social & offender services (early personality disorder etc.); alternatives to secure services and the difficulty of transferring cases to mental health settings. This could also be set in the context of the Convention on the Rights of the Child (UNCRC) and/or European Convention on Human Rights (ECHR) and identify the relevant UNCRC/ECHR rights and areas where there are potential infringements of such rights.
- A review of the youth justice system (with a particular focus on the target group identified). This could involve looking at the “journey” a child/young person takes—how s/he might enter the criminal justice system (and what opportunities there might be for avoiding that). This would seek to identify the role of the various relevant policy makers, statutory bodies and professionals. This would include health and social care as well as youth justice agencies. Such work would need to include young people and their families.

If the Children’s Commissioner were to undertake any work in this area this would need to reflect his role in championing the interests of children and young people and bringing their views and concerns to the national arena. Thus the focus of the Children’s Commissioner in this arena would be to ensure that the interests, views and experiences of children and young people were taken into account in the debates on these issues. For example:

- Publish a report highlighting the areas of concern—examining the issues from the perspective of the United Nations Convention on the Rights of the Child—and making recommendations.
- Undertake a consultation with children and young people who have experience of being placed in custodial settings (including children and young people with mental health problems and/or learning disabilities).

**The prevalence of mental disorder in young people in custody**

Professor Sue Bailey, February 2007

Decades of scientific research on the phenomenon of adolescent delinquency have resulted in the recognition of a large number of environmental and individual risk factors (Rutter et al. 1998). Until recently, research on psychiatric pathology as risk factors for delinquency has not received much attention and has therefore remained a subject of ongoing scientific debate (Vermeiren 2003). Over the past years, interest in the subject seems to have grown, because several sound prevalence studies have been conducted on psychiatric disorders in juvenile justice populations (Dixon et al 2004; Gosden et al 2003; Lederman et al 2004; McCabe et al 2002; Ruchkin et al 2003; Teplin et al 2002; Vreugdenhil et al 2004; Wasserman et al 2002). Because of the current research has consistently shown high rates of disorders, the debate is slowly shifting towards aspects of clinical relevance (ie for judicial handling and therapeutic intervention). For specific disorders with overall low prevalence, such as autism spectrum disorders and psychosis, research is still on the epidemiologic level.

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47 The Human Rights Act 1998 incorporates key rights under the ECHR into UK law.
Recently, Grisso and Zimring (Grisso et al, 2004) have listed three principal reasons for concern regarding mental disorders in youthful offenders (Rutter et al, 1998) the custodial treatment obligation (ie the obligation to respond to mental health needs), (Vermeiren et al 2003) assurance of due process in adjudicative proceedings, and (Dixon et al 2004) public safety (ie to the extent that there is a relation between an adolescent’s mental health status and future violent behaviour, the obligation to offer specific provisions).

Too often, mental health treatment within the juvenile justice system is lacking for those in need. A study by Domalanta and colleagues (Domalanta et al 2003) showed that only about 20% of depressed incarcerated youth an only 10% of adolescents with other disorders were receiving treatment. Fewer than half of incarcerated youth who required treatment because of substance use disorder (SUD) received intervention (Johnson et al 2004). For those reasons, it is necessary to conduct further research not only on the prevalence of mental disorders but also on the related needs for intervention.

For several reasons, high rates of mental disorders may be expected in youth in contact with juvenile justice. First, prevalence rates of psychiatric disorders in community samples were shown to be around 15% (Roberts et al 1998). Also, severe delinquency is common in the adolescent population, with about 5% showing an early-onset and persistent pattern of antisocial behaviour ( Moffitt 1993). A substantial number of adolescents will show offending behaviour and will have a mental health disorder simply because of coincidental overlap between both conditions. Second, because delinquent and antisocial behaviour reaches high levels among juvenile justice populations, a diagnosis of conduct disorder (CD) will often be made. Because CD shows high comorbidity rates with several other psychiatric disorders (Angold et al 1999), increased levels of many types of disorder may be expected. Third, risk factors for youthful offending overlap substantially with those for several types of non-disruptive child psychiatric disorders therefore, identical risk factors may underlie both antisocial behaviour and emotional or developmental problems. Finally, selection processes may play a role. Disorders for which mental health interventions is provided, such as SUD’s, may also lead to judicial involvement. Also, because of the prevalence of complex comorbidity, treatment in a regular mental health care programme may be intricate and often is not possible, thus increasing the likelihood of judicial involvement. In addition, severely disordered persons may be less likely to have the personal capability and have adequate resources to defend themselves and to avoid more drastic legal interventions.

Research on the prevalence of mental disorders in juvenile justice youth has increased steadily during the past years but remains limited compared with similar research in adults. 62 studies could be identified, totalling 23,000 individuals. Only 16 studies can be included, totalling 4,495 individuals.

Although research consistently reveals high levels of psychiatric disorders among detained juveniles, rates vary widely by study, ranging from more than 50% to 100% (Dixon et al; Gosden et al; Lederman et al; McCabe et al; Ruchkin et al; Teplin et al; Vreugdenhil et al; Wasserman et al; Atkins et al; Shelton; Vermeiren et al). CD and SUD’s carry highest prevalence rates, but other mental disorder also present commonly in this population.

Limitations of current research

The type and nature of psychiatric interviews varied by study. Second, the moment of investigation and the period of diagnostic assessment also differed by study. Some studies focused on youth shortly after detention (Teplin et al 2002), whereas others investigated youth in the post adjudication phase (Vreugdenhil et al; Wasserman et al; Atkins et al; Shelton; Vermeiren et al). The moment of assessment may have relevance because detention itself may influence the psychologic condition (eg by exacerbating depressive symptoms) (Vermeiren et al 2003). With respect to psychiatric diagnosis, different tie frames (eg point prevalence versus prevalence over a specific period) were often used.

Third, enormous difference exist among studies on relevant sociodemographic and criminological characteristics, such as age, gender, ethnicity, family structure, socioeconomic status, and the nature of criminal behaviour.

Fourth, studies were conducted in different countries and, for those in the United States, in different states.

Fifth, some studies investigated antisocial youths referred specifically for psychiatric assessment. Although this population may give an overall impression of the types of psychopathology typically present in the delinquent youths referred for clinical services, the epidemiologic value of such information is limited, and generalisation towards the whole delinquent population is unjustified.

Last, because information from parents is largely unavailable, almost all current prevalence studies have relied uniquely on the youths themselves as informants. Although this reliance is understandable given the difficulties in finding parents willing to be interviewed, it may hamper reliability of findings.
Ev 60  Joint Committee on Human Rights: Evidence

REFERENCES


INTRODUCTION

1. This submission is provided by the Children’s Rights Alliance for England48 (“CRAE”) and the National Society for the Prevention of Cruelty to Children (“NSPCC”)49 in response to the JCHR’s call for written evidence on the compatibility of the Secure Training Centre (Amendment) Rules 2007 (the “Amendment Rules”) with international human rights standards50 and any observations regarding the use of force against children in secure training centres, prior to holding an oral evidence session with the Rt Hon. David Hanson MP, Minister for Justice, on 10 October 2007. Dame Mary Marsh of the NSPCC and Carolyne Willow of CRAE served on the advisory panel of the Carlile Inquiry51, interviewing children in private about the use and impact of restraint and “distraction” techniques.

2. The Amendment Rules give rise to serious concerns about child safety in secure training centres (“STCs”) and should be annulled. The Rules extend the circumstances in which physical restraint can be used, placing greater discretion in the hands of staff. They were introduced without any public consultation, in the context of serious public concern about child injuries and deaths in STCs and following the disclosure in a recent inquest of systematic failures by the Youth Justice Board (“YJB”) to protect children.52

3. Two months have passed since the Government proposed a joint six-month review of restraint. The proposal fails to allay our concerns due to a lack of information as to the review’s terms of reference, a lack of transparency about the nature of authorised restraint techniques53 and continued delay.

4. Our key recommendations are summarised below, followed by fuller submissions. Copies of our letters to the European Committee for the Prevention of Torture are annexed to this submission.

OUR KEY RECOMMENDATIONS

Treatment of children in custody

5. An urgent, independent public inquiry should be carried out into the treatment of children in custody in the UK, with a view to bringing the juvenile justice system into line with international human rights standards for children.

Purpose of restraint

6. The current rules on the physical restraint of children held in secure training centres are in breach of international human rights standards and should be reviewed and amended immediately.

7. We accept that it is sometimes necessary to use appropriate physical restraint on children in STCs. However, we have serious concerns about the apparent over-reliance on restraint in STCs to date, as illustrated by the frequency of its use and personal testimony of children.54

8. Physical restraint should be a measure of last resort only ever used to prevent serious physical injury save that, within the context of detention, there are strong arguments for restraint to be permitted to prevent immediate escape. Arguments concerning the use of restraint for this purpose and other narrow and clearly defined purposes, such as the prevention of serious property damage, should be considered in the context of a full, public inquiry into the treatment of children in custody and what restraint powers are genuinely required and justifiable, including a review of authorised restraint techniques (see paragraph 12 below).

48 CRAE is an alliance of over 380 voluntary and statutory organisations committed to the full implementation of the United Nations Convention on the Rights of the Child (“CRC”). Our mission is to transform the lives and status of children (under 18 year-olds) in England by lobbying for laws and policies to be fully compliant with children’s human rights, monitoring Government action on implementing the CRC and other human rights instruments, and disseminating children’s rights information to the public.

49 The NSPCC is the UK’s leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children through a combination of community-based projects, national helplines and other work to achieve cultural, social and political change. This is achieved through a combination of service provision, lobbying, campaigning and public education.

50 See paragraphs 28 to 44 below.

51 An independent inquiry commissioned by the Howard League for Penal Reform, which reported in February 2006 on the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes.

52 Inquest into the death of Gareth Myatt, July 2007.

53 See paragraph 24 below.

54 Approximately 250 children are held in the UK’s four STCs. Freedom of information requests by CRAE have revealed that “distraction” techniques were used 768 times in STCs in the period November 2004 to October 2005 and that 51 injuries resulted, with no children receiving outside medical treatment (State of Children’s Rights in England, third report by CRAE, p 22), and that the techniques were used 121 times from February to August 2006 (State of Children’s Rights in England, fourth report by CRAE, p 25). Parliamentary Answers have shown that between January 1999 and June 2004 restraint was used 11,593 times in STCs (Hansard, 24 June 2004, col 1522W; Carlile Report, para 101) and that that restraint was used 3,036 times in the period November 2005 to October 2006 (Hansard, 18 December 2006, col WA259). One child reported to the Carlile Inquiry that slamming a mug on a table was sufficient for PCC to be applied (Carlile Report, para 138).
9. Restraint should never be used simply to maintain order or to impose the authority of staff over children.\textsuperscript{55}

10. Corporal punishment should be explicitly prohibited in all settings.

\textbf{Restraint techniques}

11. Restraint techniques that carry a risk of serious injury or death (including asphyxiation) or are deliberately intended to inflict pain\textsuperscript{56} (so-called “distraction” techniques) should be abolished immediately pending an urgent, independent public inquiry into the treatment of children in custody.

12. There should be a full and transparent review of authorised restraint techniques in all settings, the available alternatives, and the safeguards required to ensure maximum child protection and human rights standards are achieved and maintained. Children with direct experience of physical restraint should be consulted as part of this review.

13. There should be one approved set of restraint methods across education, health and custodial settings.

14. Measures must be urgently introduced to improve risk assessments during restraint so that, wherever it is apparent that a child is suffering discomfort or pain that could indicate a risk of serious harm or death, restraint will be immediately “scaled down” or stopped.

\textbf{Other safeguards}

15. There should be a legal duty on all providers of education, health and custodial settings that use physical restraint to inform children and their parents or carers of their restraint policy, the methods used and the safeguards in place.

16. Whenever a child is subject to physical restraint, the parents or carers of that child should be notified immediately and the relevant children’s advocacy service should also be informed immediately that restraint has taken place.

17. National statistics should be published each year reporting on the incidence of physical restraint in education, health and custodial settings, and providing disaggregated data on the circumstances of children subject to restraint and the reasons for restraint.

\textbf{WIDER CONTEXT—FAILING VULNERABLE CHILDREN}

18. Our submissions should be read in the wider context of the UK’s extremely low age of criminal responsibility, the increasing criminalisation of children and the harmful impact of custody on children. The UK has one of the highest rates of child custody in Europe and a transformation is required in the way we deal with children in conflict with the law. It is often the youngest and most vulnerable children that are placed in STCs, and the introduction of the Amendment Rules is a matter for serious public concern.

19. Most custodial institutions are not tailored to children’s needs, creating dangers for children as well as staff. Efforts must be focused on alternatives to custody and, where custody is absolutely necessary, investing in specialist staff and settings that can meet children’s needs and facilitate their rehabilitation in a safe environment.

20. The failures of the current system were summed up by the comments of the Serious Case Review Panel who reported to Lancashire Safeguarding Children Board in September 2007 on the circumstances surrounding the tragic death of 14 year-old Adam Rickwood in Hassockfield STC in 2004 shortly after being restrained. Concluding that, based on the evidence available to them, Adam should probably not have been restrained, the panel commented generally that “the whole [criminal justice] system treated AR as a child in need of custody, rather than a child in need of care”.\textsuperscript{57}

21. The Panel noted that crucial gaps remain in child protection in the secure estate generally (including, for example, a lack of clarity about the legal status of children who are subject to remand to local authority accommodation with a secure requirement) but commented that “[r]egardless of their legal status, these children/young people need to be afforded the same level of care and protection as any other child”.\textsuperscript{58} The use of restraint is of particular concern given that many children in STCs have suffered past abuse.\textsuperscript{59}

\textsuperscript{55} It appears that such techniques are currently used in STCs for purposes such as “persuading” children to attend classes or to return to their rooms.

\textsuperscript{56} Such techniques cause significant injuries and, because they humiliate, subjugate and de-humanise the child, can inflict serious emotional trauma.

\textsuperscript{57} Report of the Serious Case Review Panel upon the circumstances surrounding the death of AR at Hassockfield Secure Training Centre on 9th August 2004 (LSCB, 3 September 2007), Part II, page 12, first para.

\textsuperscript{58} Ibid, page 12, second para.

\textsuperscript{59} As highlighted in the report Past Abuse Suffered by Children in Custody—A Way Forward (YJB, November 2006). As far as we are aware this report has still not been formally published by the YJB, although it is in the public domain.
THE RULES ON RESTRAINT

22. Before the introduction of the Amendment Rules, staff in STCs were authorised to physically restrain children using methods approved by the Secretary of State, when necessary to prevent physical injury, escape, property damage or inciting other children to committing any of those acts.

23. The Amendment Rules extended these powers to permit the use of authorised physical restraint techniques “where necessary for the purpose of ensuring good order and discipline . . . where no alternative method of ensuring good order or discipline . . . is available”.60

24. The approved methods of restraint are set out in a Prison Service manual61 (the “PCC Manual”) and include the deliberate infliction of pain through nose, rib and thumb so-called “distraction” techniques. The manual is not in the public domain and the YJB has refused to provide a full copy in response to CRAE’s freedom of information request in May 2007, forcing us to apply to the Information Commissioner whose decision is awaited. We note that the JCHR’s request for the same information has been refused by the Minister for Justice.62

25. “Distraction” techniques63 are intended to cause pain, and on many occasions have caused injury to children, as well as carrying a risk of serious emotional trauma. They consist of the following:

— THUMB: Bending the upper joint of the child’s thumb forwards and down toward the palm of the hand.
— RIB: Using an inward and upward motion of the knuckles into the back of the child exerting pressure on the lower rib.
— NOSE: Using the outside of the hand in an upward “chop” motion on the child’s septum.

26. The Serious Case Review Panel recorded a staff account of Adam Rickwood’s restraint which noted that he “had blood running from his nose which is common after the nose distraction technique has been administered”64 and recorded Adam’s injuries as including “[f]ive linear abrasions 7 and 2 mm beneath the ala of the left side of the nose” and “a linear abrasion 9mm in length on the left ala of the nose”.65 Probably of even greater concern than these injuries is the impact this method of restraint may have had on Adam’s mental state.

27. Other restraint techniques have been found to carry a risk of serious physical injury such as asphyxiation and some have techniques been banned following deaths and serious injuries to children. An urgent safety review is required of the techniques which remain in use.

INTERNATIONAL HUMAN RIGHTS STANDARDS

28. Urgent reform is required in order to prevent inappropriate force being used against children in the secure estate in breach of international human rights standards, including the UN Convention on the Rights of the Child, the European Convention on Human Rights and other instruments, and to prevent offences being committed under the Offences Against the Person Act 1861 and the Children and Young Persons Act 1933. We believe the Amendment Rules are vulnerable to legal challenges both in relation to restraint generally and especially in relation to the “distraction” techniques.

29. We refer to our key submissions above and submit that immediate action is required to bring the UK into line with the following requirements, all of which are binding upon the UK under international law.

UN Convention on the Rights of the Child (“CRC”)

30. The current restraint regime is in breach of a range of requirements under the CRC, including the following:

Article 3: Requirement for the best interests of the child to be the primary consideration in all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

Article 6: States parties’ obligation to “ensure to the maximum extent possible the survival and development of the child”.

Article 19: States parties’ obligation to undertake all appropriate measures to “protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation . . . while in the care of . . . any . . . person who has the care of the child.”

60 Secure Training Centre Rules 1998, Rule 38 (as amended by the Secure Training Centre (Amendment) Rules 2007).
62 Letter from the Minister for Justice to the JCHR dated 10 July 2007.
63 These techniques are described in the Carlile Report on page 38 (Howard League for Penal Reform, 2006, available at www.howardleague.org or by telephone on 020 7249 7373).
Article 20: States parties’ obligation to provide special protection and assistance to children temporarily or permanently deprived of their family environment.

Article 37(a): States parties’ obligation to ensure that no child is subjected to “torture or other cruel, inhuman or degrading treatment or punishment”.

Article 37(c): States parties’ obligation to ensure that every child deprived of liberty is “treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”.

Article 39: States parties’ obligation to “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse . . . Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

Article 40(1): States parties’ obligation to “recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society”.

31. The United Nations Committee on the Rights of the Child commented in its 2002 Concluding Observations that it was “concerned at the frequent use of physical restraint . . . in custody . . .” and urged the UK Government to “review the use of restraints 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”.66 We believe similar concerns are likely to be raised by the UN Committee when the UK is examined in 2008.

32. In its 2006–07 General Comment on corporal punishment, the UN Committee defined such punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”67 and referred to the use of such punishment in many settings, including “all forms of alternative care . . . and justice systems”.68

33. The UN Committee further stated that it “recognises that there are exceptional circumstances in which teachers and others, eg those working with children in institutions and in conflict with the law, may be confronted with dangerous behaviour which justifies the use of reasonable restraint to control it . . . The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimise the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control”.69

34. The Committee went on to comment that “eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States Parties.”70

35. In its 2007 General Comment on children’s rights in juvenile justice, the UN Committee stated that “[r]estraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted.”71

European Convention on Human Rights (“ECHR”)

36. The following provisions of the ECHR, incorporated into domestic law under the Human Rights Act 1998, are engaged by the current restraint regime:

Article 2: The right to life (including the state’s positive obligation to protect the lives of those held in detention)

Article 3: The prohibition of torture and inhuman or degrading treatment or punishment

Article 8: The right to privacy (including physical integrity)

66 Committee on the Rights of the Child, Thirty-first session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention; Concluding observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/ 15/Add. 188, 9 October 2002)

67 UN Committee on the Rights of the Child, Forty-second session, Geneva, 15 May-2 June 2006, General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia) (CRC/C/GC/8, 2 March 2007), para. 11.

68 Ibid, para. 12.

69 Ibid, para. 15.

70 Ibid, para. 22.

Article 13: The right to an effective remedy before a national authority notwithstanding that a violation has been committed by persons acting in an official capacity
Article 14: The prohibition of discrimination

37. We believe the use of “distraction” techniques under the current rules is particularly vulnerable to legal challenge in respect of Articles 3 and 14.

UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UNCAT")

38. UNCAT defines torture as meaning “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

39. The Convention requires States parties to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

40. In its 2004 Concluding Observations on the UK’s compliance with UNCAT, the UN Committee Against Torture noted with concern, in respect of the UK’s criminal justice system in general “reports of unsatisfactory conditions in the State party’s detention facilities including substantial numbers of deaths in custody” and recommended that the UK should “develop an urgent action plan, including appropriate resort to criminal sanctions” to address those concerns.

41. There is a clear risk that the misuse of restraint may breach these provisions.

International Covenant on Civil and Political Rights ("ICCPR")

42. The ICCPR requires children to be accorded treatment appropriate to their age and legal status (Article 10) and for procedures against children to take account of their age and the desirability of promoting rehabilitation (Article 14).

Charter of Fundamental Rights of the European Union

43. Regard should also be had to this Charter, particularly Article 24 which requires that children should “have the right to such protection and care as is necessary for their well-being” and that “[i]n all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.”

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “JDL Rules”)

44. Amongst other requirements, the JDL Rules require that:

— The deprivation of liberty “should be effected in conditions and circumstances which ensure respect for the human rights of juveniles.”

— “Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.”

— “The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority . . .”

72 Different rules and practices on restraint apply in different secure settings.
73 UNCAT, Article 1(1).
74 Ibid, Article 2(1).
75 Conclusions and recommendations: United Kingdom of Great Britain and Northern Ireland, 10/12/2004 (CAT/C/CR/33/3), para. 4(g).
76 Ibid, para. 5(f).
77 Charter of Fundamental Rights of the European Union, Article 24(1).
78 Ibid, Article 24(2).
80 Ibid, Article 13.
81 Ibid, Article 14.
UNIVERSITY VIOLENCE STUDY

45. Due weight should be given to the recommendations of the 2006 United Nations World Report on Violence against Children, which notes that “[v]iolence against children while in justice institutions . . . is more common than violence against children placed in institutions solely for provision of care” and calls on governments to prohibit all violence in care and justice systems and to ensure quality staffing and training for all those who work with children in those settings.83

CHILD DEATHS IN CUSTODY

46. Twenty-nine children have died in custody in the UK in the last 17 years, including 14-year-old Adam Rickwood and 15-year-old Gareth Myatt in 2004, both of whom died following the use of physical restraint by staff in two of the country’s four STCs. Adam had been subjected to a nose “distraction” hours before his death.

47. On 28 June 2007, jurors at the inquest into Gareth Myatt’s death returned a verdict of accidental death and made sweeping criticisms about the conduct of the YJB, including the following failures which it concluded caused or contributed to Gareth’s death:

— Lack of adequate assessment of the safety of Physical Control in Care, and the Seated Double Embrace in particular, before it was introduced.
— Failure to undertake a medical review of the safety of Physical Control in Care, and the Seated Double Embrace in particular, by the Home Office or the YJB, before Gareth’s death.
— Lack of personnel at the YJB with specific management responsibility for the safety of Physical Control in Care prior to Gareth’s death.
— Inadequacy in the response by the YJB to the National Children’s Bureau Report as to the urgent need for the medical review of Physical Control in Care.84
— Inadequacy in the YJB’s response to the letters of David Tuck, the YJB monitor at Rainsbrook STC in 2002 and 2003, in which it was noted that children were complaining that they could not breathe while being restrained and that some were vomiting.
— Inadequacy in the YJB’s monitoring of the use of Physical Control in Care at Rainsbrook STC.
— Inadequacy in the monitoring of the use of Physical Control in Care at Rainsbrook by Rebound (the YJB’s contractor).

OVER-RELIANCE ON RESTRAINT—CONCERNS ABOUT STAFF AND SETTING

48. CRAE wrote to the then Minister for Justice in May 2007 and again (jointly with the NSPCC) in June 2007 to raise our serious concerns about restraint of children in custody in general and the Amendment Rules in particular, receiving a reply in August 2007. Carolyne Willow of CRAE is now due to meet with the Rt. Hon. David Hanson MP in late October to discuss these concerns.

49. CRAE wrote to the European Committee on the Prevention of Torture in November 2005 and June 2007 to encourage them to investigate these matters, receiving a response in August 2007 which reported that the Committee “continues to examine carefully the use of, and safeguards surrounding, physical restraint of children in detention in England and Wales”. Copies of this correspondence are annexed to this submission.

50. The Carlile Inquiry recommended to the YJB in February 2006 that “[r]estraint should never be used primarily to secure compliance . . .”. The YJB and Minister for Justice have sought to defend their position by stating that the restraint rules and YJB guidance, together with the common law on assault, do not permit this. The Minister for Justice has confirmed that there are no plans to amend the code of practice.85

51. However, the evidence gathered by the Carlile Inquiry, by CRAE through freedom of information requests, by the National Children’s Bureau and through the inquests into the deaths of Adam Rickwood and Gareth Myatt, suggests that physical restraint has been used routinely in STCs for unlawful purposes and, specifically, as a response to non-compliant behaviour.86

52. This was reflected by the conclusions of the Serious Case Review Panel investigating the circumstances surrounding Adam Rickwood’s death. Adam committed suicide hours after being restrained as a result of his refusal to go to his bedroom. The Panel commented that “[o]n the evidence available . . . it is probable that AR should not have been restrained”87 and raised “concern about the use of the ‘nose distraction’ technique, particularly within a system which purports not to rely on pain compliance, but also because it may well involve a breach of Article 3 of the [ECHR].”88

83 Ibid, page 216.
84 National Children’s Bureau Report to the YJB on the use of Physical Intervention within the Juvenile Secure Estate.
85 Letter from the Minister for Justice to the JCHR dated July 10th 2007.
87 Report of the Serious Case Review Panel upon the circumstances surrounding the death of AR at Hassockfield Secure Training Centre on 9 August 2004 (LSCB, 3 September 2007), Part II, page 34, first comment under para 15.1.
88 Ibid, page 34, third comment under para 15.1.
53. The Panel referred more generally to apparent staff confusion “about the basis on which restraint of young people is permitted, notwithstanding the clear guidance given in the ‘Physical Control in Care’ Training Manual, and during staff training” and noted that when questioned, Hassockfield STC staff gave varying explanations of the circumstances in which restraint could be used. It was also noted by the Panel that “immediately prior to the restraint, [Adam Rickwood] was not being physically abusive to a member of staff.”

Clarity of the law?

54. The Government claims that the Amendment Rules simply clarify the existing law. We believe this is misleading. During the recent inquest into Adam Rickwood’s death, the Youth Justice Board (“YJB”) accepted that force used in order to ensure good order and discipline would be unlawful.

55. The coroner in Adam Rickwood’s inquest called for a clarification of the law to prevent future deaths in custody. The Amendment Rules do nothing to address the coroner’s concerns, being apparently primarily concerned with legitimising the actions of STC staff rather than introducing further safeguards for children.

56. The Amendment Rules will inevitably encourage even wider use of restraint and will lead to more harm for children in STCs. The Secure Accommodation Network has indicated that it is “fundamentally opposed” to the new rules.

57. The wording of the Amendment Rules is open to wide interpretation and make it easier to justify the use of physical restraint, but will not help STC staff judge when restraint is appropriate. Far from transmitting a clear message to STC staff that their use of physical restraint should be dramatically reduced, the new rules significantly widen the circumstances in which staff may physically restrain children and leave more discretion in the hands of staff.

58. Serious concerns have been raised about the quality of staff, adequacy of their training and staffing levels in STCs. Further concerns have been raised about potential conflicts of interest, given that the private firms managing STCs must meet targets for children’s participation in education in order to secure financial rewards. It became apparent from interviews with children during the Carlile Inquiry that restraint was being used to ensure children attended education sessions (see paragraph 64 below).

59. The Serious Case Review Panel on Adam Rickwood’s death made a number of concluding recommendations regarding the use of restraint nationally, including the following:

“xxv. That more detailed guidance as to the circumstances in which PCC may be used be included in a revised edition of the Manual, to be supplemented by initial/refresher training of all staff.”

“xxvii. That all ‘pain distraction’ techniques used on children be reviewed as a matter of urgency.”

“xxxi. The use of restraint in the whole of the secure estate is reviewed nationally and that any proposed changes made to the current system are subject to a period of open consultation.”

Lack of consultation

60. We agree with the concerns raised by the JCHR in its letter of 25 June 2007 to the Minister for Justice that the Rules constituted a “significant and controversial extension of the circumstances in which restraint can be used in secure training centres” without informing the JCHR.

61. The Amendment Rules were laid without any public consultation and in direct contradiction to the recommendations of child protection and penal reform organisations, including the Carlile Report.

62. The YJB and Ministry of Justice failed to consult the Children’s Commissioner or any other agency with particular expertise in child care and child protection. Many of these agencies have subsequently written to the Secretary of State to express their concerns about the Amendment Rules.

63. It appears that even the Secretary of State’s appointed panel of experts, the PCC Review Panel, was not consulted about the change in the rules. The Panel has apparently not met since March 2005.

90 Available from the Howard League for Penal Reform at www.howardleague.org or by telephone on 020 7249 7373.
CHILDREN’S VIEWS ON RESTRainment

64. Testimony from children about the use of restraint in a variety of settings is helpful to illustrate the type of injuries and powerful emotional impact suffered by children as a result of its use:

“I got PCCd from education because I would not go to a tutorial . . . I was PCCd by a female and a male staff member. The man got my head down and pushed me against the wall. Two people on response were holding my arms. The man had my head and pushed my nose up and it was bleeding . . . I got walked from education to the [residential] unit. My trousers were half way down. My knickers were showing. I asked the female staff member to pull up my trousers and she said “no”. Nothing happened about the nosebleed. I didn’t see the nurse. I never see her because I’m always angry. They push your nose right up here. I put in a complaint but they are allowed to use force.”

“Lewis told us that he was aware of others being restrained and that ‘some people came back with cuts on their lips, like they’ve been banged into a wall.’ He estimated that he witnessed two restraints every week. There appeared to be little faith in the complaints system . . .”

“. . . some are in a children’s home because of abuse and force, and getting restrained is the same . . .”

“. . . It makes you feel like you’re nothing. People holding you down brings bad memories. It’s horrible. Makes you want to head butt them.”

“. . . I still bear a grudge against the way I was restrained . . .”

65. In a statement found in Adam Rickwood’s room after he died, he gave his own account of the restraint carried out on him hours earlier, concluding:

“. . . When I calmed down I asked them why they hit me in the nose and jumped on me. They said it was because I wouldn’t go in my room so I said what gives them the right to hit a 14-year-old child in the nose and they said it was restraint . . .”

CONCLUSION

66. In conclusion, we refer to the summary of key recommendations above and look forward to the JCHR’s report on this fundamental issue.

Carolyne Willow
National Co-ordinator
CRAE

Diana Sutton
Head of Policy & Public Affairs
NSPCC

25 September 2007

17. Memorandum by 11 MILLION

SUMMARY

11 MILLION believes that, following the passage of the Secure Training Centre (Amendment) Rules 2007, there is an increased risk that children may be physically restrained in Secure Training Centres in violation of their rights under articles 2 and 3 of the European Convention on Human Rights and article 37 of the United Nations Convention on the Rights of the Child.

1. 11 MILLION is a national organisation led by the Children’s Commissioner for England, Professor Sir Al Aynsley-Green. The Children’s Commissioner is a position created by the Children Act 2004. The Children Act requires the Children’s Commissioner for England to be concerned with the five aspects of well-being covered in Every Child Matters—the national government initiative aimed at improving outcomes for all children. It also requires us to have regard to the United Nations Convention on the Rights of the Child (UNCRC).

97 “PCC” is a reference to “Physical Control in Care” and here means “restrained”.
98 Evidence given by Martha, a girl in her early teens held in a STC, during the Carlile Inquiry (Carlile Report, p 43).
99 Carlile Report, p 45.
100 Child’s comment reported on page 15 of the Commission for Social Care Inspection’s report, “Children’s Views on Restraint” (December 2004), available from the CSCI at: www.rights4me.org.uk or by telephone on 0845 015 0120.
101 Ibid, p 16.
102 Ibid.
103 See INQUEST briefing on restraint, June 2007 (www.inquest.org.uk).
2. The Children’s Commissioner was not consulted on the recent amendment to the 1998 Secure Training Centre Rules, despite having a statutory responsibility to promote awareness of the views and interests of children in England and, on non-devolved issues, across the UK. It is 11 MILLION’s view that far from providing clarity, as called for by the Coroner in the Adam Rickwood Inquest, the amending statutory instrument allows for a greater degree of subjectivity and individual interpretation as to when it may be legitimate to restrain a child. Permitting restraint for the purposes of “ensuring good order and discipline” is imprecise and may lead to individual custody officers restraining children or young people for failing to comply with an order such as to tidy up, attend class, or go to bed, construing their action as a threat to “good order and discipline”. The use of restraint in such circumstances risks violating articles 2 and 3 of the European Convention on Human Rights (ECHR) and article 37 of the United Nations Convention on the Rights of the Child (UNCRC).

3. The UN Committee on the Rights of the Child recently issued a General Comment in which it made explicit the circumstances under which children may be physically restrained, consistent with article 37:

“Restraint or force can only be used when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment.”

The Committee goes on to say:

“Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned.”

11 MILLION believes that the current use of restraint in Secure Training Centres fails to meet these requirements, and the recent statutory instrument extending the circumstances in which restraint may be used could be understood to legitimise the use of restraint for the purposes of non-compliance with an order and potentially as a punitive measure.

4. The cases of Adam Rickwood and Gareth Myatt—two children who died in Secure Training Centres—highlight the potentially damaging physical and mental impacts of restraint. A 2005 Ofsted inspection report on Hassockfield STC, where Adam Rickwood died, indicates that restraint was often logged as being used for “non-compliance”. It is argued that this use of physical force, which can be seen to have potentially fatal outcomes, is not consistent with articles 2 or 3 of the ECHR.

5. Following the publication of the UN Study on Violence, which made special reference to the UK’s use of violent practices in Secure Training Centres, the General Assembly of the United Nations, issued Resolution 61/439, urging States to:

“...take measures to promote constructive and positive forms of discipline and child development approaches in all settings, including the home, schools and other educational settings and throughout care and justice systems”.

11 MILLION believes that extending the rules governing restraint in secure training centres to include maintaining good behaviour and discipline allows restraint to be used in an unconstructive and potentially negative way, in opposition to this resolution.

6. The potential for future human rights violations are increased by the actual techniques that are authorised in STCs for the purposes of restraint. The “Physical Control in Care” or “PCC” method involves the use of nose, thumb and rib “distraction” techniques which cause pain and have resulted in numerous injuries, such as nose bleeds.

7. According to figures supplied by the Youth Justice Board, there were 2,574 incidents of restraint amongst a population of around 240 children in STCs between February 2006 and March 2007. This indicates a high level of institutional use of restraint. 11 MILLION believes that the amendment to the rules governing the use of restraint will have the undesirable result of increasing this figure.

8. The high levels of use of restraint in STCs and the pressure coming from those responsible for managing the STCs to increase the circumstances in which it is possible to use restraint, raise fundamental questions about the suitability of the regime in STCs and its ability to meet the needs and protect the rights of extremely vulnerable children and young people.

104 Children Act 2004, section 2.
106 Inspection of Hassockfield Secure Training Centre, 2005, OFSTED.
9. 11 MILLION fully agrees that in the wake of two inquests into the deaths in custody of Adam Rickwood and Gareth Myatt, the rules governing the use of restraint required clarification to prevent future tragedies. 11 MILLION believes that law and practice should have been tightened to prevent the use of restraint in situations other than where a child is in danger of injuring him/herself or others, attempting to abscond, or damage property.

10. 11 MILLION welcomes the Government’s announcement of an independent inquiry into the use of restraint in STCs. We hope that the reach of the inquiry will be wide, and will take evidence from children and young people within the youth justice system who have experience of being restrained. It should also examine the range of restraint techniques, workforce issues and cultural/institutional factors that have a bearing on the use of force in secure settings.

CONCLUSION

In light of the evidence on the use of restraint against children in secure training centres and the interpretative comments of international human rights institutions, we urge the Committee to consider the compatibility of the Secure Training Centre (Amendment) Rules 2007 with the Human Rights Act and the United Nations Convention on the Rights of the Child. We hope that the findings of the Joint Committee’s inquiry will influence the terms of reference for the Government’s Review of Restraint and help lead us to a position where the rights of children in custody are fully promoted and protected in line with domestic and international human rights standards.

25 September 2007

18. Memorandum from Mr Pete Bentley

HEADLINE OVERVIEW OF THE THRUST OF MY EVIDENCE

That the UK can only succeed in complying with our Human Rights obligations in relation to Children in Secure Training Centres by legislating that the Children At 1989 applies “beyond doubt” to all Children in a Local Authority Area without qualification as to their circumstances and that children in Secure Training Centres are defined as “looked after” children within the meaning of that Act.

In addition that the actual wording that defines our obligations under the European Convention on Human Rights and the UN Convention on the Rights of the Child be included in our principle domestic legislation concerning the welfare of children (eg by an amendment to the Children Act 1989) preferable in a very early section of the Act. [This I believe would enhance the “chances” of it being taken seriously by first line practitioners.]

Main Evidence Section

I have no personal nor direct professional interest in the case of Adam Rickwood

For the last 30 years plus I have been involved in Social Work with children and young people. I have been involved in the application of the Law to Social Work practice issues—mainly in the area of Adoption And Fostering. I have taught social work practitioners the provisions of the Children Act 1989. Lately I chair an Adoption Panel for a Local Authority and a Fostering Panel for a national Voluntary Child Care Charity. I am a registered social worker (General Social Care Council reg number E/1024190)

The points I make below are my opinions based on a long-term interest in this issue and on what I heard from attending part of the inquest into the death of Adam Rickwood (but only for about four days in total—I therefore did not hear all the evidence presented to the inquest).

I was intending to write rather a lengthy submission but had the opportunity a couple of days ago to read the “Report to Lancashire Safeguarding Children Board —Report of the Serious Case Review Panel upon the circumstances surrounding the death of AR at Hassockfield Secure Training Centre on 9 August 2004 ( Part II)” published 3 Sept 2007. The “AR” in the title refers to Adam Rickwood.

Since reading that report I realised that all of my concern was encapsulated in that report. I therefore intend to briefly comment on some of the points that are made in that report. I refer to the report as “SCRP” (Serious Case Review Panel) with page and paragraph references.

I hope that your inquiry has access to that report (and if not I recommend that it be considered as evidence before your enquiry). It is available at http://www.lancashire.gov.uk/education/safe_child_board/documents/pdf/scrp_ar_090804.pdf
**Issues from attending the Inquest**

There were many points of concern that I had from evidence I directly heard.

For example there did not appear to be any qualified social worker on the staff at all (I heard mention of a student social worker only).

A report read to the inquest from a member of staff referred to Adam as Trainee number “923R” rather than by name.

There was clear evidence given that communication between for example the day and night shifts did not go into the detail as to what had happened to Adam during the restraint incident on the day of his death (see SCRP page 37 para 18.6/18.8).

There was a concerning thread throughout that Adam was not in an establishment which was staffed by people who had relevant training relating to the needs of children rather than “inmates” or prisoners.

**References from the SCRP Report**

Further examples of comments made in the SCRP report which highlight my concerns:

- Non availability of allocated key worker (Page 10—2nd para down).
- View of the SCRP that Adam should not have been restrained (Page 10—5th para).
- View of the SCRP that the manner in which Adam was restrained was probably in breach of the “non-decking” policy in the PCC manual (Page 10, last para).
- View of the SCRP that the use of the “nose distraction” technique might well involve a breach of Article 3 of the European Convention of Human Rights (Page 11, 2nd para).
- View of the SCRP that the legal status of children/young people remanded into the care of the Local Authority with a secure requirement continues to be “grey area” (Page 12, 2nd para).
- View of the SCRP that detaining a child under 16 within a custodial setting was unacceptable. (Page 12, para 7)
- View of the SCRP that an experienced qualified senior child care professional should be part of the management team at Hassockfield. (Page 21, last para).
- View of the SCRP that the welfare of the child should be paramount (Page 28, 2nd para).

**Concluding Comments**

Finally I am concerned from what I heard at the inquest and from the content of the Secure Training Centre (Amendment) Rules that we (ie the UK) are not in compliance with the UN Convention on the Rights of the Child (as quoted in your Chairs letter dated 25 June 2007). For example as stated in the SCRP report:

Regarding pain and the nose distraction technique—(page 41 para 18.25)
The restraint used on Adam not being allowed in a regulated childrens home (Page 34/35 para 16.1, 16.2).  

First response being synonymous with restraint (Page 11, 3rd para)

I heard Mrs Pounder (Adams mother) say outside the inquest hearing (comments she also said during a television interview) words to the effect that “they” (meaning I infer the Adults collectively responsible for Adam) had not “put their hands around Adams neck and murdered him” but that they had “driven” him to his death. Her use of the word “driven” has stayed with me since she said it and I believe the concept of a child being “driven” to an act when collectively a system has failed them (see the whole SCRP report for justification) bears serious reflection and consideration.

My prime point is that I believe that Adam (and probably many other children) have not been affording a duty of care that the state has a responsibility to provide to them.

My suggestion and request to the Joint Committee is to consider the relevance of the Children Act 1989 in this matter. The Secure Training Centre (Amendment) Rules 2007 (SI 1709) go “the other way” to the one I believe appropriate ie they “legalise” physical restraint “for the purposes of ensuring good order and discipline” in addition to the reasons already there in rule 38 of the Secure Training Centre Rules 1998.

I believe we must start from some where else. My starting point would be to put “beyond doubt” that the Children Act 1989 applies to all children in the area of a Local Authority without qualification and that the words in the Munby judgment* “subject to the necessary requirements of imprisonment” be “deleted” (by the enactment of appropriate legislation). Issues of restraint and the care of children who have been accused or convicted of serious offences can then be developed along the lines of children cared for in regulated childrens homes.
There is ample evidence in the Adam Rickwood case that there was (and is) total confusion as to whether or not a child like Adam is a “looked after” child within the meaning of the Children Act 1989 or not. This is not academic. In simple terms: Is the Local Authority in whose area the child is ultimately responsible for the welfare of that child regardless of what physical establishment he or she is in? I believe there needs to be total clarity about this—ie it needs to be “beyond doubt”.

THE “MUNBY JUDGMENT”

— The Judgment of Munby J in R (Howard League for Penal Reform) v Secretary of State for the Home Department [2002] EWHC 2497 (Admin) (Para 186 of judgement) ruled that the Children Act 1989 did apply to children like Adam “subject to the necessary requirements of imprisonment”.

The full order of the Court was as follows:

186. Subject to any further submissions that counsel may wish to make I propose to grant a declaration in the following terms: “IT IS DECLARED THAT:

(1) The Children Act 1989 (“the Act”) does not confer any functions or powers or impose any duties, responsibilities or obligations upon either the Secretary of State for the Home Department or the Prison Service (or any of its staff or employees).
(2) The Act applies to children in Prison Service establishments (including Young Offender Institutions) subject to the necessary requirements of imprisonment.
(3) Accordingly, the functions, powers, duties, responsibilities and obligations conferred or imposed on local authorities by the Act (and, in particular, by sections 17 and 47 of the Act) do not cease to arise merely because a child is in a Young Offender Institution or other Prison Service establishment; however such functions, powers, duties, responsibilities and obligations take effect and operate subject to the necessary requirements of imprisonment.
(4) The statement in paragraph 3.1.4 of Prison Service Order 4950: Regimes for Prisoners Under 18 Years Old that “The Children Act 1989 does not apply to under 18 year olds in prison establishments” is wrong in law.”

Pete Bentley
22 September 2007

19. Memorandum by INQUEST

INTRODUCTION

1. That the issue of child deaths in custody is receiving public and parliamentary exposure is a tribute to the determination of bereaved families that what happened to their children does not happen to other children and other families. Despite the evidence that emerged from the investigations into the deaths of Adam Rickwood and Gareth Myatt the only government response thus far has been:

(a) the introduction of the Statutory Instrument without public consultation or debate; and
(b) the announcement of a “independent review” of the use of restraint the terms of reference of which are yet to be agreed.

The current investigatory processes are incapable of dealing with the systemic issues highlighted in the cases of Adam Rickwood and Gareth Myatt.

THE REVIEW OF RESTRAINT

2. As of 1 October 2007 no detailed terms of reference of the review had been made public nor had a Chair been appointed. Our understanding is that the review will report six months from the appointment of the Chair which means that it is now unlikely to report until Spring of 2008.

3. Lord Hunt’s announcement in the House of Lords on Wednesday 18 July 2007 that the review intends to focus on restraint and the narrow question of uniformity is in grave danger of repeating a pattern of missed opportunities and failings of the past. A review of the use of restraint across the entire juvenile estate was carried out by the National Children’s Bureau in 2003. The focus of this report was the question of uniformity of restraint. Such was their concern about the lack of a medical assessment of Physical Control in Care (PCC) within STCs they recommended an urgent medical review. This never took place. We note conclusion two of the jury’s narrative verdict following the death of Gareth Myatt:

i. “(2) The failure to undertake a medical review of the safety of Physical Control in Care, and the Seated Double Embrace in particular, by the Home Office or the Youth Justice Board, before Gareth’s death caused or contributed to Gareth’s death.”
4. On paper the mission statement of YJB remains to ensure that custody for children is safe, secure and addresses the causes of their offending behaviour. Despite all the evidence that has emerged during the inquests into Adam Rickwood and Gareth Myatt about the dangerous methods of restraint being used too soon, too often and for purposes outside the contract, the rules themselves, and the YJB’s Code of Practice, it is quite shocking—and inexplicable—that there has been a continuing failure to carry out a medical assessment of PCC. The YJB panel that oversees restraint has not been reconvened since March 2005; no pathologist or other expert on restraint related deaths or restraint asphyxia has been consulted by the YJB, nor has one been appointed to the panel. Evidence emerged at the Adam Rickwood inquest in 2007 that Jon Collier, the lead instructor at the Prison Service National Training College on PCC was under the impression that injuries from the use of the nose distraction were rare, as if not he would have been informed by the YJB. He was visibly shocked when shown for the first time (by counsel for the family) the injuries actually suffered by children at Hassockfield.

**Inspection and Monitoring of STC’s**

5. The monitoring system within STC’s has been too focused on “contract compliance” and contractual “outputs” for the centres rather than on the real “outcomes” for children in terms of their treatment, experiences and conditions.

6. The inquests exposed fundamental flaws in the inspection process of STC’s which have recently passed from the CSCI to the Office for Standards in Education (Ofsted) As a matter of principle and common sense, secure establishments should be inspected by people with the requisite expertise and experience. HM Inspectorate of Prisons remains responsible for inspecting Young Offender Institutions and individuals within it have particular expertise in the treatment and conditions in which juveniles and young offenders should be detained (including addressing restraint related issues). Arguably, had STCs not been privatised at their inception, the responsibility for monitoring and inspecting their practices would have remained within the remit of HM Inspectorate of Prisons (who in fact remain responsible for inspecting privately run prisons housing young offenders). The Inspectorate has in the past combined expertise with Ofsted in joint inspections of the educational needs of children in penal custody. Their most recently published inspections of Brinsford YOI (July 2007) and Werrington YOI (September 2007) drew attention to the shocking practice of forcibly strip searching children and the high use of force. We propose that Her Majesty’s Chief Inspector of Prisons should take over the inspection of STCs.

**Staff Training**

7. There needs to be a proper review and analysis of recruitment and training against the background that:

   (a) staff frequently do not have relevant previous experience of working with children; and

   (b) prison officers have a 13 week training course, compared to seven to nine weeks for Training Assistants at STCs.

   The level of training and level of previous experience currently deemed appropriate for Training Assistants and Supervisors at STCs is wholly inadequate given that the children detained at STCs are among the most vulnerable children in Britain. Staff are required to fulfil a function for which they are neither professionally trained nor adequately equipped.

**Public Inquiry Call**

8. INQUEST believes that the current debate around the use of restraint of children in secure training centres needs to be seen in the wider context of the treatment of children and young people within the youth justice system. In increasing the number of children and young people detained in manifestly unsafe environments the state is failing in its duty of care. There is the ever present risk of more death and injury to children.

9. It is plain that if this country is to honour its International Treaty obligations as far as these deaths are concerned there must be effective remedial action taken. This obligation flows from the European Convention and was succinctly distilled by Lord Bingham when the Amin case came before the House of Lords. Vital among the Article 2 objectives after a death in State custody are:

   i. “that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.” (Amin, [31], per Lord Bingham)

10. It is difficult to comprehend how 29 children could have died in custody since 1990 without a single public inquiry into any of the deaths taking place. INQUEST has been calling for a public inquiry into the treatment of children in the youth justice system since the death of Joseph Scholes at HMP Stoke Heath in March 2002. This call was supported by the Coroner who conducted the inquest, over 100 MP’s and Peers, key penal reform, child welfare and human rights organisations, the General synod of the Church of England and the parliamentary Joint Committee On Human Rights.
11. In our written evidence to the JCHR Inquiry into deaths in custody in December 2003\textsuperscript{108} we wrote:

“We would like to draw the committee’s attention to the case of Joseph Scholes which is illustrative of the concerns these deaths raise about the way in which the criminal justice deals with children. It also reveals the inadequacy of the current inquest system to deal with the complexity of issues by these cases that engage Article 2 of the Human Rights Act.

Joseph was a deeply disturbed boy who had disclosed a history of alleged sexual abuse from an early age. On 24 March 2002 he hanged himself in his cell at Stoke Heath Young Offender Institution in Shropshire. His death occurred just nine days into his two-year sentence for street robbery.

Joseph’s death and other tragedies like it, raise serious issues about the ability of the present system to cope with society’s most vulnerable young people and to provide them with a safe as well as a secure environment. The question arises as to how best to identify any systemic failings that do exist and how future tragedies can be avoided.

The case for a public inquiry rather than an inquest

INQUEST, Nacro and Yvonne Scholes, Joseph’s mother recently launched a call for a public inquiry into his death.

The narrative of Joseph’s life is grim reading and reveals a catalogue of failures by state agencies to provide appropriate care and help to an exceedingly vulnerable child.\textsuperscript{109}

Joseph’s death raises a number of wider questions about the treatment and care of children in the criminal justice system and the accountability of those agencies responsible, in particular the Youth Justice Board, the Prison Service and Social Services Departments. It asks questions of society and how it should respond when children show clear signs of being disturbed and in need of professional intervention. It raises questions about how agencies and individuals could have intervened in Joseph’s case and how we can ensure that we have better systems and better practice in the future.”

12. We also expressed concern in both the written and oral evidence about the number of restraint related deaths in custody and the lack of joined up learning between state agencies following the use of dangerous restraint techniques.

13. In further written evidence to the JCHR Inquiry in September 2004 after the death of Gareth Myatt we wrote:

“We have warned of the ever-present risk of more deaths because of the slow progress in ensuring evidence based joined up thinking approach concerning restraint techniques, training and the dangers of positional asphyxia across all custodial settings . . . The death of Gareth Myatt begs questions about how it was that potentially lethal methods of restraint were being used against children and what medical input and advice was taken before such methods were introduced. Our understanding is that the restraint methods used are designed specifically for use on children and that training is provided by the Prison Service.”

14. The failure of successive governments to hold a public inquiry runs counter to the spirit of democratic accountability, transparency and the pressing need to learn form failures in the system that have cost these children’s lives. The system not only fails the legacy of the children who have lost their lives. It fails their families and the wider public interest in denying opportunities to ensure that lessons are learned and further deaths and injuries avoided.

15. What the inquests into the deaths of Adam Rickwood and Gareth Myatt uncovered is that the youth justice system urgently needs profound public scrutiny, investigation and review that is significantly wider in scope than any narrow review of restraint. In light of the wide-ranging issues requiring consideration and action the most effective way of responding to these needless and avoidable deaths and ensure the necessary learning and action takes place is through the establishment of a wider independent inquiry and examination of the treatment of vulnerable children in the youth justice estate with the proper involvement of families, children and those working in the area of child care and child protection. Proper, transparent and critical analysis of the defects of the custodial treatment of children is now essential.

Deborah Coles
Co-director INQUEST
1 October 2007

\textsuperscript{108} House of Lords House of Commons Joint Committee on Human Rights Deaths in Custody Third Report of Session 2004\textendash{}05 Volume II: Oral and Written Evidence

\textsuperscript{109} A child’s death in custody—Call for a public inquiry—INQUEST and NACRO Campaign Briefing—November 2003.
20. Memorandum by the Howard League for Penal Reform

HOUSE OF LORDS DEBATE ON THE USE OF RESTRAINT IN SECURE TRAINING CENTRES
WEDNESDAY 18 JULY 2007

BRIEFING

INTRODUCTION

1. Statutory Instrument 1709 extends the powers of the staff in secure training centres. The current rules (SI 1998/472) allow restraint in order to prevent significant harm to the child, another child or to property. The new SI will allow restraint to ensure good order and discipline.

2. The Youth Justice Board is promoting this change as a response to criticism during the inquest into the death of Adam Rickwood who took his own life following restraint. Evidence showed that staff were using physical restraint in order to force children to comply with orders which was in contravention of the rules and possibly unlawful. Lord Carlile’s independent inquiry carried out for the Howard League for Penal Reform indicated that the profligate use of physical restraint including the deliberate infliction of pain on children could be constitute a criminal offence.

3. The companies running the secure training centres have been exerting pressure on the YJB to legitimise their practices. They are subjected to financial penalties if they fail to deliver the regime according to the contract, for example, if a child refuses to obey an order to go to education.

STATISTICS

4. In May 2007 there were 251 children being held in the four STCs. This includes 85 girls aged 14 to 17 and 166 boys predominately aged 14 to 16. 166 were sentenced to a detention and training order and were therefore in custody for a relatively short period. 49 were on remand and only 26 were subject to a S90 or 91 sentence for a longer period.

5. Parliamentary Questions tabled by Lord Carlile showed the prevalence of the use of restraint inside the STCs, from November 2005 to October 2006:

<table>
<thead>
<tr>
<th>STC</th>
<th>Boys restraints</th>
<th>Girls restraints</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hassockfield</td>
<td>421</td>
<td>221</td>
<td>642</td>
</tr>
<tr>
<td>Medway</td>
<td>735</td>
<td>313</td>
<td>1,048</td>
</tr>
<tr>
<td>Oakhill</td>
<td>383</td>
<td>538</td>
<td>921</td>
</tr>
<tr>
<td>Rainsbrook</td>
<td>252</td>
<td>173</td>
<td>228</td>
</tr>
</tbody>
</table>

The sum total was 3,036 restraints of which 1,245 were on girls. This means that 41% incidents of restraint are perpetrated on girls who represent 34% of the STC population.

BLACK AND MINORITY ETHNIC CHILDREN

6. Prisons have been monitoring the use of restraint on BME young people for several years but STCs only started monitoring in February at the behest of the Youth Justice Board. Prison monitoring shows that restraint is used disproportionately on young black men.

7. On 19 June we wrote to the Commission for Racial Equality about how the SI might impact disproportionately on black and minority ethnic children.

8. We contact the Ministry of Justice asking for a copy of the race impact statement prepared for the SI and received the reply that none had been carried out. The CRE has written to the Ministry of Justice asking whether a race impact assessment has been undertaken and expressing concern about the potential adverse impact on ethnic minority children.

9. Gareth Myatt, the boy who died under restraint in Rainsbrook STC, was mixed race.

RESTRAINT

10. STCs use a method called physical control in care (PCC). It involves adults holding the child. They may also use what are euphemistically called “distraction” that involves the deliberate use of pain by bending the thumb, the use of the knuckles in the child’s back or using the hand to hit the child’s nose. Injuries to children and staff occur regularly.

11. Metal handcuffs are used on children in STCs, but not in prisons. Handcuffs were used on children 36 times during 2006 in Hassockfield, the STC where Adam Rickwood took his own life just after he had been restrained.
12. There is no independent monitoring of the incidents. Whilst the YJB has contracts with two charities to provide advocacy services to children in STCs they are not empowered to ask about incidents of restraint. The monitors placed inside STCs by the Home Office are restricted to supervision of adherence to the contract. No body looks at the CCTV footage of events to investigate and monitor what happens during a restraint and whether the written report accurately reflects what happened. No one interviews the child after a restraint.

RESTRAINT IN OTHER INSTITUTIONS

13. A paper circulated by the YJB, “Restraint in Secure Training Centres: A stakeholder briefing” claims that the proposed extension to the powers to restrain is similar to existing powers and practice inside schools. This is disingenuous at best. Whilst staff in schools do have the power to restrain children, it is extremely rarely exercised. The Howard League consulted the National Union of Teachers which said that there are 7.5 million children in schools but last year but only 900 children from secondary schools were permanently excluded for an assault against an adult and 1,500 for an assault against another child. There are no national figures for restraint incidents by staff, but it would be in these circumstances that it could be used. In no circumstances may a member of staff in a school deliberately inflict pain on a child, as they do routinely in an STC.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

14. In April 2007 the Committee on the Rights of the Child published guidance (CRC/C/GC/10) on children’s rights in juvenile justice. It said that many countries still have a long way to go in achieving full compliance with the Convention and it is the Howard League’s contention that the UK government is flouting its obligations as a matter of policy. Indeed, this SI is in direct contravention of the UN Convention.

15. The Committee instructs states parties that: Restrained or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules should be punished appropriately.

16. No member of staff has been dismissed or disciplined for the inappropriate use of restraint (to our knowledge) yet it has been extensively used in contravention of existing STC rules and in contravention of the UN guidance. Staff were not suspended or disciplined following the death of Gareth Myatt.

HOWARD LEAGUE LEGAL TEAM

17. Our lawyers have frequently received complaints from children in secure training centres about restraint. They are currently representing a child whose arm was broken during a restraint incident inside a secure training centre.

18. If this SI is brought into force, it is likely that a legal challenge will be brought.

This briefing does not repeat points made by other organisations and the Howard League for Penal Reform is pleased to support the Inquest, SAN and CRAE/NSPCC briefings.

FURTHER DOCUMENTS AVAILABLE ON REQUEST


Frances Crook
Director
The Howard League for Penal Reform
21. Memorandum by Mark Dawes, Director & National Coach Tutor, NFPS Ltd

“Injustice anywhere is a threat to justice everywhere”. Martin Luther King (1963)

On Wednesday 13 June 2007 the Ministry of Justice laid before Parliament a Statutory Instrument (SI 2007, No 1709) that seeks to amend the rules governing the use of force within Secure Training Centres (STCs). The Ministry of Justice is proposing to broaden the circumstances in which children can be forcibly restrained. The Secure Training Centre (Amendment) Rules 2007 were laid before Parliament on 13 June and come into effect on 6 July. They enable a trainee to be removed from association in the interests of good order and discipline; and permit physical restraint to be used to ensure good order and discipline.

The YJB have clarified their position on the submission of the new SI by stating that ‘Custody officers have the duty to ensure good order and discipline (as set out in the primary legislation the Criminal Justice and Public Order Act 1994). However, the rules governing the use of restraint in STCs do not include a provision empowering custody officers to use restraint to maintain “good order and discipline”. This contrasts with the situation in other environments such as young offender institutions (YOIs) under Prison Service rules, and in schools (2006 Education and Inspections Act s93).’

Now I think we can all agree that it is important to maintain good order and discipline, especially in a prison or other secure establishments, to prevent greater harms occurring, ie, riots or large scale fights that would expose children, young people and indeed the staff to the risk of harm and/or serious damage to property. That would be consistent with the law. However, the proposed SI could lead to an increased risk of children being injured if the Government merely implement this SI without a full review of the current training that staff receive in physical restraint and how that training is managed as part of a quality management system. Therefore, the question we have to ask is, is this a necessary piece of legislation or is it another beaurocratic attempt at legislative enforcement in absence of competent training? In short, will it make a difference or will kids still continue to be at risk of dying in secure estates?

We shouldn’t lose sight of the fact that this amendment to the STC rules come almost immediately after inquests into the deaths of two children who were detained in Secure Establishments. One, 15-year-old Gareth Myatt, died in April 2004 while being restrained by three adult males in Rainsbrook STC, Northants. The other, 14-year-old Adam Rickwood, hung himself hours after being manhandled at Hassockfield STC, near Durham, in August the same year.

Gareth Myatt was restrained for refusing an order from staff to clean a sandwich toaster. For that the 15 year-old teenager, who weighed less than 45kg (just over 7 stones), was restrained by staff using a “double seated embrace” technique, which resulted in the young boy dying of positional asphyxia.

During the inquest into Gareth Myatt’s death, the jury heard that the Youth Justice Board (the organization responsible for overseeing the youth justice system in England and Wales monitoring the STC’s and to ensure that custody for young people is safe) had been warned about the excessive use of force at Rainsbrook but had failed to take action. As a result jury’s verdict, delivered last week, declared that the YJB’s failure to respond to the warning contributed to Myatt’s death.

For Adam Rickwood, the youngest child ever to die in penal custody in the UK, it was his refusal to go to his room that got him into trouble.

Adam was found hanging in his room in Hassockfield STC at around midnight on 8 April 2004. In the hours preceding his death he was subjected to restraint by four male officers. During the restraint they used a “nose distraction” technique, described as a “karate-like chop” to his nose. This was said to have caused Adam to have a nose-bleed for an hour. There was no suggestion that any of the criteria set out in the STC Rules had been met that could have justified Adam’s restraint. After his death a “statement” was found in his room in which he described in his own words what had happened to him:

“My [Adam Rickwood’s] Statement [to the authorities]

On the 8th August at approx 6.50pm, I was sat at the table on the wing 2 Bravo. My friend was messing about, so he was put in his cell for 30 minutes (time out). When my friend was in his cell he asked me to go over to his door. When I went over he slid a piece of paper under the door and asked me to give it to a female member of staff.

When I gave the paper to her she told me to get in my room. I asked why and she said “Just go in” then at that point I refused because there were no explicit reason for this. Then she called for first response (assistance from other staff). When the other staff came they all jumped on me and started to put my arms up my back and hitting me in the nose. I then tried to bite one of the staff because they were really hurting my nose. My nose started bleeding and swelled up and it didn’t stop bleeding for about one hour and afterwards it was really sore. When I calmed down I asked them why they hit me in the nose and jumped on me. They said it was because I wouldn’t go in my room so I said what gives them the right to hit a 14-year-old child in the nose and they said it was restraint.”

Following the increase in concern about children in residential care during the early 1990’s, the Government responded by commissioning a number of enquiries (there were 10 public enquiries between 1990 and 1996) including the Utting report in 1991 and the Warner report in 1992. In response to the exposure of this large-scale institutional abuse of children and young people Government departments have
issued extensive guidance aimed at promoting and protecting children’s rights. The Utting report concluded that the implementation of the Children Act 1989 (in 1991) would be sufficient to prevent the likes of Pindown happening again.

Interestingly enough, in 2003, the year before Rickwood died, staff at Hassockfield, which holds 40 children, had used restraint 972 times!!! That equates to 24.3 restraints per child per year or 81 restraints a month!!

However, the proposed changes in the new Statutory Instrument (SI 2007, No 1709) which seeks to amend the rules governing the use of force within Secure Training Centres (STCs), seem to have been devised to sanction the use of the circumstances that would give rise to the use of restraint that would not be allowed under the Children Act 1989. As such there is an issue here of conflicting rights should the new proposed Statutory Instrument be implemented. Furthermore, the new propose Statutory Instrument seems to fly in the face of a recent ruling by Mr. Justice Munby in 2002 regarding how the Children’s Act applies to Young Offenders Institutions.

THE CHILDREN ACT 1989 AND PHYSICAL RESTRAINT

In Volume 4, Section 1.83 of the Children’s Act it states:

"Physical restraint should be used rarely and only to prevent a child harming himself or others or from damaging property. Force should not be used for any other purpose, nor simply to secure compliance with staff instructions."

THE CHILDREN ACT AND YOUNG OFFENDER INSTITUTIONS

In November 2002, the High Court ruled that the Children Act 1989 also applies to children in Young Offender Institutions and such children therefore have the same rights to have their welfare protected as others up to the age of eighteen.

Mr. Justice Munby’s decision was in response to a legal challenge brought by the Howard League for Penal Reform who challenged the Home Office’s insistence that Young Offender Institutions were immune from the Children Act. The Howard League said that segregation and physical restraint inflicted under harsh regimes contributed to high levels of self-harm and suicide. According to the Howard League young people in prisons are routinely treated in ways which would trigger child protection investigations in other settings.

The proposed Statutory Instrument submitted by the Ministry of Justice also seems to challenge the United Nations Convention on the Rights of the Child, and in particular, Article 19 which states:

"Children shall be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of their parents or of any other person. Child protection should include support for the child and their carers, prevention, identification, reporting, referral, investigation, treatment, judicial involvement, and follow up of instances of child maltreatment."

The proposed change by the Ministry of Justice basically flouts the protection offered by the Children’s Act 1989 and Article 19 of The United Nations Convention on the Rights of the Child, both designed to protect children from state sanctioned abuse as well as placing a positive obligation on state authorities to do so.

I would also go so far as to propose that the proposals, should they lead to more deaths that could have been prevented had this SI not been accepted, is a breach of Article 2 of the Human Rights Act 1998 by a Government who has failed to uphold the basic right to life—an Absolute Right, which cannot be derogated against. Yet this is what the proposed SI will achieve.

"The difference between a police state and a state where the police are efficient, but democratically controlled, is a mighty thin one."

Lord Scarman (report on the Brixton Riots, 1981)

Proposing to amend the current legislation in relation to STC’s and YOI’s, basically contradicts Mr. Justice Munby’s decision and the very reasons why the Children’s Act, the United Nations Convention on the Rights of the Child and the Human Rights Act came into existence. If these proposals are allowed to be pushed through by an apathetic and inert society we are all guilty of allowing the state to sanction child abuse against some of society’s most vulnerable children which is very possibly likely to lead to more restraint, damage and harm and ultimately more deaths. In short, it puts STC’s and YOI’s above the law. That itself is an injustice.

As a result of concerns about unlawful practices that had emerged at the inquest, Bhatt Murphy solicitors, the lawyers for Adam’s Rickwood’s mother, wrote to the Youth Justice Board (YJB) and the Secretary of State for Justice to ensure that children in STCs were being treated in accordance with the law.
At the inquest into the death of Adam Rickwood the YJB’s lawyers accepted that the analysis of family lawyers was correct, namely that force used in order to ensure compliance with staff instructions for good order and discipline was unlawful.

However, in response the YJB enclosed a letter that had been sent to STC’s indicating that although presently restraint could not lawfully be used to ensure compliance with staff instructions that they were working with the Ministry of Justice to amend the rules and that changes to the STC rules were imminent. And on 13 June 2007, without consultation or any debate whatsoever, the Statutory Instrument (SI 2007, No 1709) which seeks to amend the rules governing the use of force and designed to dramatically widen the circumstances under which restraint can “lawfully” be used against children within Secure Training Centres, was laid in Parliament.

Staff can only be as competent as the training and supervision given to them, and, it is possible that had the YJB done it’s job properly, in monitoring and supervising the Secure Estates and responding to the concerns and warnings presented to them in the first place, they would not need to propose this new piece of legislation to make others accountable for their failings. In contrast they could have ensured that the staff were given the appropriate information, instruction, supervision and training (as required under current Health and Safety statute) and that the management were competent enough to have developed safer systems of work and safer working practices consistent with current legislation.

That is of course provide that the YJB are competent at doing what they are supposed to do.

Interestingly enough we e-mailed the YJB on the 21st March 2007 offering to make our services and our research resource to them in response to requests that we do so from a number of staff who work in secure estates who feel that the information we provide and deliver should be made available to the YJB.

They respectfully declined our offer of assistance.

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