

Response to the Ministry of Justice consultation: Transforming Youth Custody – Putting education at the heart of detention

by HM Chief Inspector of Prisons

Summary

- HMI Prisons is an independent inspectorate. This submission is based on HM Inspectorate of Prisons' experience of inspecting young offender institutions and secure training centres (STCs) holding children under the age of 18.
- In relation to the effectiveness of custody, we highlight recent findings and recommendations under the four tests of a healthy prison – safety, respect, purposeful activity and resettlement.
- We welcome the reduction in the number of children in custody but are concerned about recent inspection findings suggesting a deterioration in overall safety and the fact that children are held further away from home.
- We are pleased to see education being placed at the heart of the youth estate and that new providers are being given the opportunity to improve the services delivered. However, we stress that staff delivering these services must be properly trained in order to manage the complex needs and requirements of this population of children.
- We would welcome the opportunity to discuss our findings further if this would be helpful.

Introduction

1. We welcome the opportunity to submit a response to the Ministry of Justice green paper *Transforming Youth Custody – putting education at the heart of detention*.
2. Her Majesty's Inspectorate of Prisons (HMI Prisons) is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952. HMI Prisons has a statutory duty to report on conditions for and treatment of those in prisons, young offender institutions (YOIs) and immigration detention facilities. HMI Prisons also inspects court custody; police custody and customs custody (jointly with HM Inspectorate of Constabulary); and secure training centres (with Ofsted).
3. HMI Prisons is one of the organisations that deliver the UK government's obligations arising from its status as a party to the UN Optional Protocol to the Convention Against Torture. OPCAT requires state parties to implement a system of independent, preventive inspection of all places of detention known as the National Preventative Mechanism (NPM). The UK NPM has a children's sub-group made up of members that inspect or monitor places that detain children throughout the UK. The children's sub-group of the NPM has submitted a response to the consultation setting out the principles that members of the NPM believe should apply to the detention of children. We endorse the NPM's response which we do not repeat here.

4. We inspect YOIs holding children and young people (aged 15 to 18) at least once every two years. Additional inspections may also be undertaken at the request of the Youth Justice Board (YJB). Inspections are conducted jointly with Ofsted, Care Quality Commission (CQC) and specialist pharmacy inspectors. We inspect STCs every year jointly with Ofsted and CQC. In addition to individual inspections, we periodically carry out cross-cutting thematic reviews.
5. All inspections of YOIs are carried out against our *Expectations* - independent criteria based on relevant international human rights standards and norms. Expectations are brigaded under four healthy prison tests: safety, respect, purposeful activity and resettlement. HMI Prisons has a separate set of expectations dedicated to children and young people held in YOIs.¹ Inspections of STCs are carried out against Ofsted's framework for inspecting². This submission draws on recent inspection findings. Not all reports of these inspections have yet been published.
6. This response does not directly address the specific questions in the consultation document but sets out some key findings from recent inspections, particularly in relation to safety and respect, which we hope will inform Ministers, the Youth Justice Board (YJB) and potential providers as they plan new provision.
7. This response draws on our findings from three types of establishment:
 - Young Offender Institutions for boys aged 15 to 18
 - Young Offender Institutions for girls aged 15 to 18
 - Secure Training Centres for boys and girls aged 12 to 17.
8. Overall, we welcome Ministers' intention to place education at the heart of reforms to youth custody and believe that it is a positive step that new providers are being given the opportunity to help improve these services. As the consultation paper indicates, many of the children in custody have been failed by the education system and expectations of the progress they can make in custody are too low.
9. However, holding children safely and securely must be an essential prerequisite to any improvements in education or offending outcomes. Our recent inspection findings suggest that as the number of children in custody falls, ensuring the safety and security of those that remain has become more difficult and this will be a significant challenge for any future provider.
10. It is therefore vital that the new secure provision is independently inspected on a regular basis to ensure that children's safety, dignity and human rights are protected. Independent inspection is a preventative measure and an essential strand of governance ensuring risk is properly addressed.

Meeting the wider needs of children in custody

11. We welcome the reduction in the number of children in custody over the past five years. Hundreds of places in the children's estate have been decommissioned. This reduction has happened very rapidly and has accelerated recently. The number of children and young people in custody under 18 years of age fell by 30% between 2001/2 and 2011/12 but fell by almost 30% again from 1873 to 1320 in one year alone between February 2012 and February 2013.

¹ *Expectations. Criteria for assessing the treatment of children and young people and conditions in prison, version 3, 2012.* London: HMIP (www.justice.gov.uk/downloads/about/hmipris/expectations-children-young-people.pdf?type=Finjan-Download&slot=0000001B&id=00000C1A&location=0A640212)

² *Inspections of secure training centres: framework for inspecting*, <http://www.ofsted.gov.uk/resources/inspections-of-secure-training-centres-framework-for-inspecting>

12. As the number of children in custody has continued to fall, recent inspections of male YOIs have found much clearer evidence that those children who remain include a much higher proportion with very high levels of need and significant behaviour problems and that establishments have struggled to manage the consequences of this change. These are recent findings and it is essential that the planning of future provision takes account of this change.
13. Reforms to the youth estate must address the social, emotional, psychological and physical needs of children in custody, if rehabilitation and a reduction in offending are to be achieved. It is imperative that providers fully understand the complexity of the children held in secure accommodation.
14. A further consequence of the contraction of the youth custody estate is that children are now being held further from home than before. In March 2010, 24% of children were held over 50 miles from home, including 7% held over 100 miles away. In March 2011, this had increased to 30% and 10% of children respectively.³ Such distances from home inhibit children's ability to maintain strong family ties, a known factor in reducing reoffending. It also affects contact with their youth offending team and makes resettlement planning more difficult.

Safety

15. Our expectation for safety for young people and children states:

*Children and young people, particularly the most vulnerable, are held safely.*⁴

16. This includes safety in the following areas: transport to the establishment; how children are looked after when they arrive; management of bullying and violence; use of force; rewards and sanctions; treatment for alcohol and drug misuse; child protection and safeguarding.
17. If children are to benefit from the new proposals, providers must ensure that safety is not compromised. We inspected six male YOIs over the last 12 months and found safety outcomes had declined in three of these. Two were no longer sufficiently safe and in a third, which we did not fully inspect because of its imminent closure, safety outcomes had also significantly deteriorated.
18. There were three self-inflicted deaths in YOIs holding children and young people in 2012 – the first since November 2007.
19. Most YOIs we inspected recorded between five and ten self-harm incidents each month. At HMP YOI Hindley however, despite a fall in the population, the number of self-harm incidents had risen from the previous year by 18% to almost 20 each month in 2012. At the time of the inspection of Hindley, its population was 192. This demonstrates the vulnerability and complex needs of children held in custody. We have witnessed such vulnerability during inspections including:
 - A distressed child who asked to be taken home. He had a serious medical condition and having displayed extremely disruptive behaviour had been placed on the segregation unit. Following discussion with staff the boy was moved to a more appropriate secure medical facility.
 - A boy who continually lay on his bed, not speaking, who staff described as being 'low'. However, an entry in his file stated that he had made a serious attempt to harm himself. It also stated that a lot of his current stress arose from wearing anti-ligature clothing, as he

³ Youth Justice Board (2012) *op.cit.*

³ *Expectations, op.cit.*

found it degrading. This issue was raised with staff and consequently intensive supervision replaced the use of anti-ligature clothing.

20. We have found significant levels of fights and assaults in all the establishments we have inspected recently. There were fights or assaults in most establishments almost every day. There were 300 assaults in the six months preceding our inspection of one establishment. Some of these were gang-related and extremely violent. We saw CCTV footage of incidents in which staff were deliberately distracted and then very violent group assaults were mounted on a single child with the clear intention of causing serious harm. Some staff told us they believed these assaults may have been part of gang-initiation practices. At another recent inspection the establishment provided us with its statistics on injuries sustained by children following violent incidents, over a 12-month period. These included:
 - seven broken bones;
 - 26 cases of stabbings, lacerations, cuts and gashes; and
 - one case where a child became unconscious during an incident with another child.
21. These high levels of violence are reflected in our most recent annual report of children and young people in custody in which almost a third of boys reported feeling unsafe in their establishment at some point, a significant increase from 27% the previous year.⁵
22. The high levels of violence in YOIs are reflected in equivalent levels of use of force and disciplinary measures. Inspectors found use of force ranging from 20 to 80 incidents per month although much of this was low level and there was generally good use of de-escalation techniques. However, segregation was over-used as a punishment in all establishments and young people were kept isolated for too long. Three recent inspections have found establishments conducting many more than 100 adjudications a month; these establishments also recorded high numbers of minor reports.
23. By contrast, within STCs we have found that the use of restraint was generally low and incentives provided were motivational. Children did not often require to be separated from each other to help maintain control, which we attribute to STCs being smaller establishments with higher levels of staffing, resulting in more positive interactions between staff and children.
24. Our inspection evidence also shows that over a third of boys reported having a drug problem on arrival at their establishment; however, fewer boys than in 2010–11 said that they had received help for this problem. Similarly, although 13% of boys said they had an alcohol problem on arrival into custody, only 42% said they had received help for this; lower than in 2010–11.⁶
25. In 2012 HMI Prisons published a thematic review of the care received by looked after children aged 15-18 in YOIs⁷. These children are heavily over represented in the custodial population and self report greater vulnerability and higher levels of need than young people who have not been in care. Young people who had been in care were more likely to report problems with drugs and alcohol and were more likely to report having mental health problems than young people who had not been in care.
26. Safeguarding and child protection arrangements that promote the welfare of children, particularly those most at risk, are essential. Proper scrutiny by the local safeguarding children board of all areas of custodial life where the safety of children may be compromised is critical. Overall, we have seen improvements in

⁵ *Children and Young People in Custody 2011-12, op.cit.*

⁶ *ibid.*

⁷ www.hmcpis.gov.uk/documents/reports/CJJI_THM/OFFM/Looked_After_Children_Thematic_Report_ENG.pdf

the cooperation between local authorities and secure establishments, but it remains an area that requires ongoing scrutiny.

Respect

27. Our expectation for respect for children and young people states:

Children and young people are treated with respect for their human dignity⁸

28. The above expectation includes: where children are detained; relationships with peers and staff; equality and diversity; different types of faith and religious activity; complaints about treatment; children's legal rights; health services provided; food; and the purchases that children can make.
29. Children should be held in an environment that is suitable for their age group and needs. The facilities should be safe and staff should be properly trained, motivated and have high expectations in order to maintain constructive relationships.
30. HMI Prisons and Ofsted have recently completed the first cycle of yearly, unannounced inspections of the 4 STCs which provide secure provision for young people aged 12-17. The units are generally smaller and more intensively resourced than YOIs. Staffing levels are relatively high and because the buildings are purpose built they are appropriately equipped. The overall effectiveness of each of the STCs was good, in that children were looked after in a safe and decent environment. Staff understood the needs of the children and generally had positive and constructive relationships with them. This helped to create a successful balance between care and control. It also meant that young people were able to communicate and express themselves through good consultation arrangements. Overall they generally behaved well. Poor behaviour was challenged appropriately and de-escalation techniques were commonly used.
31. Evidence from one of our most recent YOI inspections also demonstrated how a good physical environment can have a positive impact on the behaviour of children. One unit contained a high proportion of the most serious offenders, yet there were fewer incidents on this unit than on others. Children living there reported that they felt they were being respected and that this made a difference to their behaviour. Positive relationships with staff, mutually high expectations, the opportunity to be kept busy with good quality education, training and exercise; and constructive work to reduce re-offending all contributed to creating a safe and secure environment.
32. More generally however, inspectors have noted a deterioration in the standard of living conditions in YOI accommodation. In some cases this may be the result of a lack of maintenance e.g. poor quality shower facilities. However, in some instances it is simply because the establishment is not kept clean enough. The unchecked spread of graffiti inside cells has become much more evident recently and the content is frequently gang related.
33. Children from black and minority ethnic backgrounds consistently express more negative perceptions about their experiences in custody than their white counterparts, including their treatment on reception and relationships with staff. Some are not aware that they can report discrimination. The proportion of children describing themselves as Muslim has grown significantly in recent years to 22% in 2011-12. Muslim survey respondents also report more negative perceptions in comparison to their non-Muslim peers about many aspects of their custodial experience. It is rare for gay or bisexual young people to identify themselves in prison because of a perceived hostile atmosphere towards them. Staff working with a diverse group of young people should be well informed and sensitive about cultural, social and religious matters.

⁸ *Expectations, op.cit.*

34. As the consultation paper acknowledges, children held in custody have high levels of need. In addition, research suggests that 23% of young offenders have learning difficulties (IQ below 70) and 36% borderline learning difficulties.⁹ Further, at least 60% have difficulties with speech, language and communication that adversely affect their ability to participate in certain elements of the custodial regime.¹⁰ These specific needs must be addressed within the youth custody environment in order to improve resettlement and reduce reoffending. Children should be screened upon arrival to assess needs and identify any disability, and staff should be appropriately trained to deal with these needs.
35. Health services for children in custody should be equivalent to those in the community. If a child exhibits a particular health need, the level of care that they receive should involve integrated working between the establishment and the local health economy. A therapeutic environment should be in place for those children who have been victims themselves.
36. The right balance must be struck between unit size and numbers of children detained to ensure they receive proper support. In some inspections of girls units we have found that if the numbers held are too low this can produce an intense environment which results in children feeling increasingly restricted.

Purposeful activity

37. We are strongly in favour of education being placed at the heart of reforms to youth custody. However, we would also emphasise the importance of other types of activity in custody.
38. Within STCs, children were engaged effectively during the day and in the evenings through educational activities and leisure pursuits. We found that the overall quality of teaching and learning was normally good. However, in some establishments, work-related and vocational training required improvement.
39. Most YOIs do not meet our standard that children should receive 10 hours unlocked each day. This standard is in place to allow interaction with peers and staff as well as to increase the likelihood of rehabilitation. However, recent inspection evidence suggests that the amount of time children are able to spend out of their cells is in fact diminishing. More often than not, children are eating meals in their cells, rather than communally. Opportunities for exercise are also limited. We inspected one establishment where only 5% of boys said they could take exercise every day.
40. With respect to education, our inspection evidence found the quality of teaching in YOIs to be variable, with higher standards often observed in smaller units. Problems associated with punctuality and attendance tended to be found in larger units.

Resettlement

41. We welcome plans to extend the youth contract programme for 16- and 17-year-olds to ensure all children leaving custody receive the support and challenge they need to enter education, training or employment with training. We are also in agreement that custodial establishments themselves need to contribute to this effort before release.

⁹ Harrington, R., and Bailey, S. (2005) *Mental health needs and effectiveness provision for young offenders in custody and the community*. London; YJB.

¹⁰ Bryan, K., and Mackenzie, J. (2008) *Meeting the speech, language and communication needs of vulnerable young children*, London: RCSLT

42. We routinely recommend an increase in the use of release on temporary licence as a way of preparing children for their return to the community. This should include the opportunity for them to visit or arrange suitable placements in education, employment, apprenticeships or training and, if appropriate, restorative justice placements. It is also essential that secure establishments work with external agencies to arrange suitable and sustainable accommodation for children upon release.
43. In 2011 HMI Prisons published a thematic report¹¹ on resettlement provision which followed 61 young men leaving six different establishments. The outcomes from our sample were very disappointing. Only 32% had suitable accommodation and Employment, Training and Education (ETE) placements available on release. Two young people were required to report homeless and one in five were placed in accommodation assessed as unsuitable. Of the one third of young men who had an ETE placement upon release, only half were still attending one month later. One month after release six of the young men were back in custody and one was 'on the run'. No information was available on the two young men released as homeless.
44. In 2012 HMI Prisons also published a thematic review of the care received by looked after children aged 15-18 in YOIs¹². The follow up information we obtained about our sample was very concerning. Of the 12 young people interviewed, one was released without an address and one was released to unsuitable accommodation. Two had an education or employment placement to start on release. However, one month later only one child was still attending education and three were back in custody.
45. The findings of both these thematic reviews highlight the importance of careful preparation and planning, along with effective follow through work, in order to avoid poor outcomes for young people. It is critical that staff working with young people in a custodial environment collaborate closely with community based colleagues. We found good practice at one prison where a partnership had been established with a community based agency which allowed young people from a looked after background and potentially leaving custody homeless to get direct access to supported accommodation immediately on release.

Nick Hardwick
HM Chief Inspector of Prisons

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¹¹ <http://lx.iriss.org.uk/sites/default/files/resources/resettlement-thematic-june2011.pdf>

¹² *Op cit*