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Detained Children: Vulnerability, Violence and Violation of Rights

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Abstract

The United Nations Convention on the Rights of the Child (UNCRC) establishes provisions and protections to which under-18s are entitled; establishing state obligations to ensure the realisation of children's rights for all, including 'disadvantaged' or 'vulnerable' groups. This article focuses on children in England and Wales deprived of their liberty in secure care for their own or others' protection or in custody as a result of criminal justice proceedings. It explores the proposition that secure care and custody exacerbate the existing vulnerabilities of detained children, especially in custodial settings where violence is institutionalised. Demonstrating consistent breaches of international standards, it considers the actions required to ensure the implementation of rights and effective accountability through policy and practice grounded in social justice priorities.

Keywords

Children; secure care; custody; violence; vulnerability; rights.

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Introduction

Both in popular and academic discourse, 'childhood' is a relatively recent and contested concept (James and Prout 1997), usually applied from birth to puberty when a transition is made to 'youth'. Developmental and socialisation theories underpin state policy and institutional practice regarding 'children' (under-12s) and 'young people' (13–18-year-olds). While children are generally considered incompetent, irrational and dependent on adults to meet their needs, youth are portrayed as undisciplined and threatening when they are developing personal identities, testing boundaries and challenging adult authority (Muncie 2004). With a focus on the family as the primary site of care, socialisation processes reflect, reinforce and reproduce age-specific, sociocultural 'norms' and expectations.

Those transgressing acceptable boundaries of behaviour are defined in professional and political discourses as 'troubled' or 'troublesome', with formal responses prioritising either the 'welfare' of the child or 'justice-based' interventions (Goldson 2000). In defining who is troubled or troubling, child offenders 'metamorphose into dangerous youths' (Piper 2001: 34), while those who are the victims of abuse 'remain within the category of "child"' (McGhee and Waterhouse 2007: 110). The low age of criminal responsibility in England and Wales reinforces this division. At 10, significantly lower than the age for other social responsibilities, this is justified by the UK Government (1999: 180) on the basis that it is in their 'interests ... to recognise and accept responsibility, and to receive assistance in tackling criminal behaviour'.

Restricting analysis of childhood to the developmental theoretical tradition underestimates the significance of diversity while minimising the specificities of adult-child power differentials. Critical analysis emphasises the significance of children and young people as social actors negotiating their daily lives and the impacts of social class, race, gender, sexuality and abilities. Adulthood is an additional determining context present in the policies and practices structuring their experiences and opportunities (Scruton 1997). Excluded from personal, familial, institutional and public decision-making, children's voices are silenced, their powerlessness affected by how adults conceptualise childhood (Mayall 1999).

The situational complexities of children's lives create distinct and complex levels of vulnerability. Although inherently vulnerable, reliant on adults to ensure their development and wellbeing, defining children's need for care and support as indicative of immaturity or incompetence reinforces a deficit-based perception of childhood, which undermines recognition of their evolving capacities. Children's structural vulnerability, rooted in unequal relations of power and adult interpretations of their behaviour, increases their physical and emotional vulnerabilities. They are vulnerable to over-protection, marginalisation, exclusion, abuse and exploitation because they are not listened to and their perspectives are not understood.

The UNCRC defines a 'child' as 'every human being below the age of 18 years' unless majority is attained earlier. Prioritising children's rights recognises that they require care, protection and assistance in their development while acknowledging their evolving capacities. In addition to their 'best interests' as a primary consideration, the UNCRC establishes three further principles: non-discrimination; free expression of their views in all matters affecting them, with their views given due weight in accordance with their age and maturity (participation); the right to life, survival and development. Encompassing civil and political rights alongside social and economic rights, it specifies state obligations concerning care, protection, health, welfare and education as well as protections for particular disadvantaged or vulnerable groups. Internationally agreed standards also provide guidance to States regarding the administration of youth justice (the 'Beijing Rules', OHCHR 1985), the prevention of juvenile delinquency (the 'Riyadh Guidelines', OHCHR 1990a) and the rights of children deprived of their liberty in detention facilities and institutional settings from which they are not permitted to leave at will (the 'Havana Rules', OHCHR 1990b).

Guidelines on the prevention of juvenile delinquency emphasise a 'child-centred orientation' in which children have an active role in society and are not 'considered as mere objects of socialisation or control' (Riyadh Guideline 3). Recognising that nonconforming behaviour is often part of the maturation process

and 'tends to disappear' with the transition to adulthood, it is expected that policies will 'avoid criminalising or penalising' children for behaviour that does not seriously damage their development or harm others (Riyadh Guideline 5). Stressing the importance of community-based services to meet children's needs and safeguard their development, particularly for those 'demonstrably endangered or at social risk', it is expected that 'formal agencies of social control' will be used only as a last resort (Riyadh Guideline 6). The UN Committee on the Rights of the Child (CRC) has clarified that a minimum age of criminal responsibility below 12 is not 'internationally acceptable' (CRC 2007: para. 32).

The UK Government is State Party to the UNCRC, although its devolved administrations (England and Wales, Scotland, Northern Ireland) are responsible for most legislation, policy and practice within their jurisdictions. This article centres on children detained in custody or secure care in England and Wales. Given scrutiny and oversight, nationally by independent inspection and internationally through periodic reporting to the CRC, it is expected that appropriate care and support are provided to these children to meet their needs, promote and protect their rights. Focused on the vulnerabilities experienced by children detained in Young Offender Institutions (YOIs), Secure Training Centres (STCs) and Secure Children's Homes (SCHs), the article draws on 'official' sources to reveal significant levels of violence within custodial institutions alongside egregious rights violations. In reframing priorities it proposes more effective institutional accountability, with responses to harmful and 'offending' behaviours grounded in social justice objectives and operational practices consistent with children's rights standards.

Detaining Children

State Intervention

Beyond universal health, education and social care for all, targeted provision for children defined as 'vulnerable', 'at risk' or having 'additional needs' is intended to ensure personal and social wellbeing while improving their life chances and lessening the impact of socio-economic disadvantage. Statutory or specialist interventions are aimed at supporting children with 'complex needs'. Parental capacity to provide care, safety, protection, guidance and boundaries, underpins programs targeted at families in which a child's behaviour is of concern. Since the late 1990s, 'antisocial' behaviour and 'disorder' have been incorporated into youth justice legislation which prioritises prevention of offending. Limited parenting capacity, 'under-socialisation' and lack of informal regulation comprise key elements of early intervention programs targeting parents of those considered 'at risk' of offending alongside interventions with the child that focus on improving their self-esteem, resilience and educational attainment (Haydon 2014). Parenting Orders and dispositions aimed at improving the child's self-regulation and behavioural change have also been introduced, reinforcing an emphasis on 'responsibilisation' (Kemshall 2010).

Case (2006: 173) argues that the 'welfare-oriented and rights-based provision of universal and needs-based youth services' has been 'undermined by the retrenchment of the welfare state' and the 'popularity of deficit models, which target interventions on the most "at risk"'. Contravening the principle of rights for all, this can deny access to services for children 'not considered problematic enough to warrant them' (Case 2006: 174). At the same time, the assistance provided by services is 'increasingly corrective and compulsory', eroding the 'right to refuse interventions and the "care of the state"' (Kemshall 2008: 28), with the responsibilisation agenda promoting a 'conditional notion of rights and social justice' that fuses rights with responsibilities (Kemshall 2008: 21).

Consistent behaviours identified as compromising their safety, and likely to cause serious harm, can result in the child's admission to secure accommodation. Criteria, detailed in the *Children Act 1989* (S25:1), are that a child has a history of absconding, is likely to run away from any other type of accommodation and suffer significant harm if they do, or is likely to self-harm or injure others in alternative accommodation. Custodial sentences are intended to prioritise serious crimes, persistent offending or risk to public safety. For persistent offenders aged 12–17, the most common sentence is a Detention and Training Order combining custody and community supervision. Those aged 10–17 convicted of crimes that carry a life sentence for adults are detained at 'Her Majesty's Pleasure' with a minimum term to be served. For sexual

assault or grave offences, the sentence can be equivalent to the adult maximum. Those considered 'dangerous' can be sentenced to extended or indeterminate detention. Children can also be detained for not complying with the requirements of civil injunctions intended to prevent antisocial behaviour, sexual or gang-related violence.

Custody and Secure Care

Three distinct secure settings accommodate children in England and Wales.² Of the youth custody population, 70 per cent is detained in five YOIs—four in England are run by the Prison Service and one in Wales is privately run. Holding 15–17-year-old males, YOIs accommodate those considered more resilient, emotionally mature and who 'externalise their risk'. Three STCs in England hold 19 per cent of the youth custody population. One is run by the Prison Service; the other two by private companies. Providing 30 hours of education or training per week for 12–17-year-olds, two detain males and females while one is for males only. STCs are intended to hold children assessed as more independent, motivated to attend school or too vulnerable to be placed in a YOI. The remainder are detained in local authority SCHs based on a childcare ethos. Seven accommodate children referred on welfare grounds; eight accept welfare *and* criminal justice referrals. SCHs provide places for 10–17-year-old males and females, with Ministerial approval required for under-13s. Children aged 10–12 can be remanded only to local authority accommodation, including SCHs. Accommodating the youngest, most 'at risk' or 'vulnerable' children, SCHs focus on their educational, emotional, physical and mental health needs.

On 31 March 2019, in England and Wales,³ 713 under-18s were detained in YOIs and 137 in STCs. Of the 172 in SCHs, local authorities placed 56 per cent on welfare grounds and five per cent in a criminal justice context, with the rest placed by the Youth Custody Service following detention or sentencing by criminal courts. The youth custody population is overwhelmingly male (96%), and the majority (95%) are aged 15–17. Girls and 10–14-year-olds are more likely to be detained on welfare grounds in SCHs.

Given the similarities in vulnerabilities, needs and behaviours shared by those detained on welfare and justice grounds, two decades ago Goldson (2002: 155–156) noted that it was 'difficult to fathom the starkly contrasting resources, conditions and treatment that characterise their respective institutional experiences'. Confirming its continuation, Andow and Byrne (2018: 50) describe as 'arbitrary and unjust' this separation into regimes characterised by care in SCHs as opposed to control and punishment in YOIs and STCs. In practice, Hales et al. (2018: 32) suggest that the 'logic of placement is debatable' since there is 'little difference in the perceived vulnerability of the populations in YOIs and STCs'. Furthermore, placement depends on availability, a problem worsened because more children require a secure welfare placement than available places and there has been a reduction in places as a result of SCH closures (Hart 2018: 55).

Detention and Vulnerability

In terms of context-specific 'situational' vulnerabilities caused or exacerbated by personal, social, economic, political and environmental conditions (Mackenzie, Rogers and Dodds 2014: 7), most children held in secure care or custody have experienced a combination of challenging circumstances. Many also experience 'pathogenic' vulnerabilities generated by 'morally dysfunctional or abusive interpersonal and social relationships and socio-political oppression or injustice' (Mackenzie, Rogers and Dodds 2014: 9). Poor physical and mental health are common as are communication problems, neuro-developmental needs or brain injuries. Many live in severe, persistent poverty in economically disadvantaged communities. Conflict within families often includes parental separation and complicated familial relationships. In addition to parental substance misuse, mental illness and offending behaviour, many have been abused and/or neglected, leading to placement in state care. Bereavement, experiencing or witnessing a traumatic event, exposure to familial and community violence are common, as are substance misuse or addiction. Many are involved in aggressive and violent behaviour, self-harm and/or have attempted suicide (Children's Commissioner for England 2018b; Gyateng et al. 2013; Hales et al. 2018). An Edinburgh-based study found that, in addition to coming from economically deprived backgrounds and having been excluded from or leaving school at the earliest opportunity, those who reported involvement

in violence experienced higher rates of self-harm, suicidal intention, victimisation and bullying (McAra 2018: 7). Murphy (2018: 4) argues that the 'prevalence of adverse childhood experiences, psychological distress and mental health issues' suggests children's violent behaviour should be 'reframed as a vulnerability or distress behaviour that highlights unmet needs'.

The situational vulnerability of all under-18s is exacerbated for those in conflict with the law, as the low age of criminal responsibility criminalises behaviours that otherwise would prompt welfare-based responses. Demonstrating the impacts of class, disability, race, gender and sexuality, those in custody are 'routinely drawn from some of the most disadvantaged, damaged and distressed families, neighbourhoods and communities' (Goldson and Muncie 2008: 63). Young people with neuro-disabilities (The British Psychological Society 2015) and from Black, Asian and Minority Ethnic (BAME) communities (Lammy 2017) are over-represented in custody. Further, the use of secure placements is gendered. While girls are placed in mental health or welfare settings for their protection, boys are placed in youth justice institutions for behaviour defined as threatening or involvement in crime (Andow and Byrne 2018: 48–49; Hales et al. 2018: 7). Male sexual vulnerability is under-recognised (Roesch-Marsh 2014), and concerns about girls' welfare tend to focus on their 'risky' behaviours rather than them being 'at risk' from others. Paternalistic interventions emphasise the 'protection' of girls whose behaviour is deemed 'gender inappropriate' because it challenges stereotypes about female passivity and chastity (Gelsthorpe and Worrall 2009: 210).

'Offending' and 'welfare' populations are not two distinct groups. Their difficulties are similar and many have experience of both systems, meeting criteria for detention through either route (Hart 2018: 55). When the 'welfare' route is obstructed, some authorities 'explore the justice route in respect of the same children'—using 'pragmatic criminalisation' to address 'manifest welfare needs' (Goldson 2002: 91). This illustrates what Sharland (2006: 251) argues is 'an elision between the agendas of care and control'. In addition, children 'get "stuck" in whichever part of the system [welfare, justice or mental health] originally identified them, rather than the one they most need' (Children's Commissioner for England 2019: 25).

For some children, secure settings provide protection and security together with respite from substance misuse, unpredictable relationships, pressures of difficult everyday lives and demands of abusers or perpetrators of sexual exploitation. Temporarily providing a stable environment and access to specialist support, the use of secure care may keep a child safe, even alive. However, the timetable for a secure placement is driven by perceived reduction in risk rather than meeting the child's needs, inhibiting provision of long-term interventions to address the underlying causes of harmful behaviours. Children are released back to the environments they left, exposed again to difficult circumstances or risks, often without appropriate support. This generates repeat admissions, demonstrating limited impact on behaviour (Haydon 2016). Similarly, a relatively brief period in custody does not enable the development of relationships or involvement in programs to address complex needs and the reasons underpinning 'offending' behaviour. Further, incarceration is ineffective in preventing crime, exacerbating rather than reducing the likelihood of further offending (Bateman 2016).

'Pathogenic' vulnerability may also occur 'when a response intended to ameliorate vulnerability has the paradoxical effect of exacerbating existing vulnerabilities or generating new ones' (Mackenzie, Rogers and Dodds 2014: 9). As Filippeschi (2014: 11) states, detention 'rarely responds to children's individual characteristics and specific needs. Indeed, it often intensifies their vulnerability, exposing them to numerous types and situations of risk'. Living in secure care can 'act as a conduit to ... being bullied, sexual exploitation and predatory adult networks, suicide pacts, and exposure to increased criminalisation' (RQIA 2011: 43). In custody, overemphasis on discipline and security—particularly humiliating searches, use of force or isolation—reinforces violent interactions with adults while perpetuating the harm caused by histories of violence and abuse (BMA 2018), and mental ill-health is often exacerbated (Children's Commissioner for England 2015).

Institutionalised Violence in Custody

The vulnerabilities children have experienced affect their capacity to deal with life-changing circumstances, including the dehumanising conditions of incarceration (Coles and Carmouch 2015: 15). In 2017, the Chief Inspector described a 'dire situation' in which inspectors concluded that 'there was not a single establishment ... in which it was safe to hold children and young people' (HMCIP 2017: 9). A 'vicious circle' of violence prevailed, leading to restrictive regimes which, in turn, frustrated those detained (HMCIP 2017: 10). A review found that rewards and sanctions associated with behaviour management 'focused on punishment rather than incentive', with responses to poor behaviour 'locked in a negative cycle of ever greater restriction' (HMIP 2018a: 5).

Yet, levels of violence remain high. During 2017–2018, there were over 3500 assaults by children; in 57 per cent of these assaults, the victim was another child (YJB/Ministry of Justice 2019: 52–54). Forty-four per cent of children in STCs and 32 per cent of boys in YOIs reported victimisation by peers (HMIP 2019: 24, 35). The following year, a 'substantial proportion of children' in STCs continued to report experiencing bullying or intimidation by others, while bullying in YOIs 'remained a serious issue' with an 'absence of adequate formal support for victims' (HMCIP 2019: 60, 56). The safety and care of children 'required improvement' in each of the three STCs, with the level of violence 'the highest per head of those held in any type of establishment inspected' (HMCIP 2019: 60). Almost one-third of children in both STCs and YOIs reported being victimised by staff during 2017–2018 (HMIP 2019: 25, 36). In addition to staff not treating them with respect, many stated that they had no one to approach should they have a problem (HMIP 2018a: 7). The Inspectorate recognised that the 'everyday nature of violence and intimidation affects the likelihood that children will trust the institution to protect them if they report sexual abuse from other children or staff' (HMCIP 2019: 55), a concern substantiated by an investigation into sexual abuse in children's custodial institutions (IICSA 2019: 30–32).

Mainly due to changes in sentencing and reduction in use of custody, approximately 900 children were held in custody in England and Wales at any one time in 2018 compared with 2900 ten years earlier (YJB/Ministry of Justice 2019: 37). This reduction has resulted in a greater concentration of vulnerable and volatile children with complex needs being held in fewer and smaller sites. Government officials propose that these children 'have a propensity for violence ... when violence is used, it is almost a chain reaction' (Gormley 2018: Q70); incidents then rapidly escalate, leading to restraint by staff (Argar 2018: Q62). This implies the inevitability of violence, both among detained children and in staff responses. Challenging this assumption, the Inspectorate has argued that detained children, especially those with mental health needs or learning disabilities, 'require a higher level of support than is currently offered' (HMIP 2018a: 9). Reinforcing previous concerns about the lack of a strategic approach to identifying and managing the complex needs of those in custody (Wood, Bailey and Butler 2017), the Inspectorate recommended a 'needs analysis' to inform the commissioning of interventions through individualised support plans (HMIP 2018a: 10).

Children's Rights Violations

The most recent examination of the UK Government by the CRC was in 2016, and the Committee's concluding observations identified significant concerns in all aspects of children's lives. The CRC (2016: para. 22) recommended that the UK Government 'take urgent measures to address the "intolerance of childhood" and general negative public attitude towards children, especially adolescents, within society'. Further, the CRC has stated consistently that the 'best interests' principle is not reflected in all UK legislative and policy matters or judicial decisions affecting children, particularly regarding alternative care, child welfare and criminal justice. Continuing concern focused on lack of progress in enshrining the right to participation in law, policy, judicial proceedings and the decision-making processes of professionals working with children. Having highlighted relevant international standards and the CRC's 2016 concerns, what follows details the extent of ongoing rights violations.

Deprivation of Liberty

Emphasising the child's wellbeing, with responses proportionate to the circumstances of the 'offender' and the offence, a range of dispositions are suggested in UNCRC Article 40 as alternatives to institutionalisation. Noting that 'children experience pain and suffering differently to adults owing to their physical and emotional development and their specific needs', the Special Rapporteur on Torture stated that even 'very short periods of detention can undermine the child's psychological and physical well-being and compromise cognitive development' (Méndez 2015: para. 33).

The CRC (2016: para. 78d) reiterated previous recommendations that detention should be used as a last resort and without discrimination. Although the average population of children in custody decreased by 70 per cent between 2008 and 2018, England and Wales retain the highest custody rate in Western Europe (CRAE 2019: 7). Of the average monthly youth custody population in 2017–2018, 24 per cent were detained on remand, 63 per cent of whom did not subsequently receive a custodial sentence (YJB/Ministry of Justice 2019: 35). Furthermore, specific groups continue to be over-represented in custody, including boys, looked after children, children from BAME backgrounds and children with disabilities (HMIP 2019).

Significantly, the right to life, survival and development is undermined by conditions and regimes that fail to ensure children's safety in detention. In February 2017, two children in SCHs (one in England and the other in Wales) took their own lives. Revealing institutional complacency and failures, the Prisons and Probation Ombudsman (2018: 49) found serious deficiencies in monitoring: 'Troublingly, some staff recorded that checks had been carried out when they had not' and staff 'seemed unclear about the purpose of the checks and how they should be carried out'. Since 2009, there have been four deaths of under-18s in YOIs in England and Wales, three classified as 'self-inflicted' (INQUEST 2019). YOI inspections found that those under Assessment, Care in Custody and Teamwork case management for children at risk 'spent too much time locked up, and overnight checks on them were timed too predictably' (HMCIP 2019: 55). During 2017–2018, there was an increase in self-harm incidents in STCs with 30 per cent of the injuries requiring medical treatment, the highest proportion in five years (YJB/Ministry of Justice 2019: 51–52).

International standards emphasise that detention facilities should be 'correctional or educational rather than of a prison type' (Beijing Rule 19 Commentary). YOIs, operated by the Prison Service, do not fulfil these objectives. Based on a 'rehabilitative orientation' (Beijing Rule 24 Commentary), those detained should receive necessary assistance alongside training and treatment which provides the care, education and vocational skills required to help them 'assume socially constructive and productive roles in society' (Beijing Rule 26.1). The CRC (2016: para. 77f) concluded that access 'to education and health services, including mental health services, is insufficient for children in custody'.

Use of Force and Restraint

Children should not be subjected to cruel, inhuman or degrading treatment, including 'closed or solitary confinement' or any other form of punishment that may compromise their physical or mental health (Havana Rule 67). Restraint and force should be used only in exceptional cases (prevention of self-injury, injuries to others or destruction of property) for the shortest possible period, causing neither humiliation nor degradation. The CRC (2016: para. 38) repeated its previous concern about the use of restraint and pain-inducing techniques. It urged the abolition of 'all methods of restraint against children for disciplinary purposes in all institutional settings' plus 'use of any technique designed to inflict pain on children', seeking to 'ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort' (para. 39).

During 2017–2018, however, almost 6600 'use of force' incidents were recorded across the three STCs and five under-18 YOIs, an average of approximately 550 incidents per month (YJB/Ministry of Justice 2019: 56). The most common reasons were preventing harm to a third party and preventing the child from harming themselves. Over half of the children in STCs and half in YOIs reported being physically restrained during 2017–2018 (HMIP 2019: 7–8) when 5400 'restrictive physical interventions' were recorded, the highest number in five years (YJB/Ministry of Justice 2019: 49). Defined as 'any occasion in which force is

used to overpower, or with the intention of overpowering, a child', restrictive physical interventions should be a last resort (YJB/Ministry of Justice 2019: 49). However, the statistics suggest routine use of restraint.

Although inspection standards, defined 'Expectations', suggest that 'pain infliction is not applied as a form of restraint' (HMIP 2018b: 24), the Government's *Use of Restraint Policy Framework for the Under-18 Secure Estate* confirms that 'pain-inducing' techniques can be used in YOIs and STCs to protect the child or others from an immediate risk of serious harm (Ministry of Justice 2012: 7). Described as a behaviour management and restraint system developed specifically for staff in STCs and under-18 YOIs, 'minimising and managing physical restraint' techniques are intended 'as a last resort when no other intervention is possible or appropriate' (YJB/Ministry of Justice 2019: 55). Yet, these techniques were administered in the majority of 'use of force' incidents during 2017–2018, with so-called high-level techniques used in almost half of recorded incidents (YJB/Ministry of Justice 2019: 56–57).

In addition to harm inflicted on children's wellbeing, the use of painful restraint reinforces violence as a legitimate response to challenging behaviours, promoting a culture of fear that inhibits children from complaining about their treatment. Pain compliance techniques have been defined 'a form of child abuse ... likely to contribute to a culture of violence', which 'may increase the risk of child sexual abuse' (IICSA 2019: 102). Acknowledging that 'any restraint technique has the potential to hurt and cause injury to children', the Chief Inspector of Prisons informed the Joint Committee on Human Rights inquiry into use of restraint and solitary confinement in youth detention that 'techniques are not always applied correctly' (HMCIP 2018: para. 7). Reporting that inspectors heard consistent accounts 'of staff using excessive force by failing to attempt to de-escalate a situation verbally, using a higher-level hold than required or not releasing holds when the child has calmed down sufficiently', he condemned strip-searching while under restraint as 'clearly unacceptable' (HMCIP 2018: para. 9). The Joint Committee on Human Rights (2019: para. 21) concluded: 'it is clear that some restraints are not justified on the grounds of "last resort" to prevent harm', with data on reported restraints suggesting 'potentially thousands of unjustified restraints are conducted each year'. Thus, rates of restraint were 'unacceptably high, and children's rights are being commonly breached'.

Isolation, Separation and Segregation

Isolation is permitted to prevent injury or harm to any person or serious damage to property in SCHs (*Children's Homes (England) Regulations 2015*, Rule 19) and STCs (*Secure Training Centre Rules 1998*, Rule 36). The Rules stipulate that a child should be removed from free association only when all other appropriate methods of control have been unsuccessful. If removed, they should then be observed at least once every 15 minutes and not left unaccompanied for more than three hours during normal waking hours. During 2017–2018, there were 3800 'single separation' incidents in SCHs and STCs, the highest number of incidents in five years (YJB/Ministry of Justice, 2019: 48). Using confinement as a means of control, no member of staff is present and the door is locked (YJB/Ministry of Justice, 2019: 54). Generally used as a 'cooling-off' mechanism, single separations usually occur for relatively short periods. However, they are frequently used; almost two-thirds of children in STCs surveyed during 2017–2018 stated that they had been isolated (HMIP 2019: 22).

In YOIs, under Rule 49 of *The Prison and Young Offender Institution (Amendment) Rules 2015*, a boy may be 'removed from association' with the general population—so-called segregation—through transfer to a euphemistically named Care and Separation Unit when it is deemed necessary for the 'maintenance of good order or discipline' or 'in his own interests'. Segregation must be reviewed after 72 hours and then every 14 days up to 42 days (when the Secretary of State has to authorise further periods up to 42 days). The Youth Custody Service provides no information about instances of segregation but almost one-third of those in YOIs surveyed by the Inspectorate during 2017–2018 had spent a night in a segregation unit. Only 38 per cent of these boys reported that staff had treated them 'very well' or 'well' (HMIP 2019: 37–38).

YOIs also frequently use cellular confinement on landings to enforce ‘separation’. This includes a sanction, for up to seven days, for those who have committed a disciplinary offence; a temporary ‘behavioural measure’ following aggression directed towards a peer or staff member; or an aspect of ‘unrecorded isolation’ as part of the daily regime—‘restricted unlock’ at weekends or because of staff shortages (Associate Development Solutions 2015: 6). Reinforcing the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT 2017: para. 91), research by the Children’s Commissioner for England (2018a: 3) concludes that the conditions to which some children are exposed when separated by cellular confinement ‘fit the definition of solitary confinement’ (i.e., the physical isolation of individuals who are confined to their cells for 22–24 hours a day).

Between 2014 and 2018, the Children’s Commissioner for England (2018a: 5–6) recorded an increase of 43 per cent per month in episodes of segregation or separation despite a fall in the YOI population. The average length of segregation or separation had doubled to 16 days in 2018, with 70 per cent of episodes lasting more than a week. The four YOIs in England reported at least one instance lasting over 75 days. These figures included children who ‘self-isolated’ for their own safety or due to lack of mental health accommodation. The Children’s Commissioner for England (2018a: 5) recommended investigation of lengthy periods of self-isolation and provision of appropriate support. However, inspections conducted in 2018–2019 found that the use of segregation and separation had increased (HMCIP 2019: 56).

Solitary Confinement

The 2007 *Istanbul Statement on the Use and Effects of Solitary Confinement* notes that: ‘negative health effects can occur after only a few days ... the health risks rise with each additional day spent in such conditions’. According to the Special Rapporteur on Torture: ‘solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture’, whether as a disciplinary or ‘protective’ measure (Méndez 2015: para. 44). In 2016, the CRC recommended that the State party ‘immediately remove all children from solitary confinement’, prohibit its use in all circumstances, and regularly inspect the use of segregation and isolation in child detention facilities (para. 78f). This prohibition was echoed by the CPT (2017: para. 96–98) and the Committee Against Torture (2019: para. 23). The CPT added that ‘the separation, removal from association, cellular confinement or segregation of juveniles—in whatever form it takes—should be applied only as a means of last resort’, with continued access to education, physical exercise and association for isolated children. The British Medical Association, Royal College of Psychiatrists and Royal College of Paediatrics and Child Health (2018) together warned of ‘serious risks of solitary confinement causing long-term psychiatric and developmental harm’. Noting that its use is ‘counterproductive’ because it fails to address underlying issues and creates barriers to reintegration, they recommended its abolition.

In evidence to the Joint Committee on Human Rights, the Chief Inspector stated that the regime in segregation units was generally poor, with children often spending less than two hours out of the cell each day (HMCIP 2018: para. 15). He commented: ‘Experiencing poor regimes for prolonged periods may ... amount to ill-treatment’ (HMCIP 2018: para. 17). The Howard League for Penal Reform (2018) received over 40 calls in the 12 months up to March 2018 concerning children ‘isolated for more than 22 hours a day, sometimes for days on end’. Inspections ‘found many boys locked up for more than 22 hours a day on normal location in some YOIs’, experiencing ‘an impoverished regime’ sometimes ‘worse than for those held in segregation units’ (HMCIP 2018: para. 18).

Despite this evidence, successive Ministry of Justice Parliamentary Under-Secretaries of State (Argar 2018; Lee 2018) insisted that UK children are not subjected to solitary confinement. Reiterating the phrase ‘removal from association’, they maintained that segregation should never be used as punishment but can be deployed when a child puts themselves or others at risk and no other form of intervention is suitable. The Ministry of Justice (2018) stated its legal position that segregation policies are human rights compliant, with regular reviews to ensure that continuing segregation is necessary and proportionate. Argar (2018: Q59) dismissed evidence presented to the Joint Committee on Human Rights by the

Children's Commissioner as 'anecdotal' and unsubstantiated. The Joint Committee on Human Rights (2019: para. 45), however, considered separation 'harmful to children if used for more than a few hours at a time'. Beyond that, 'it can amount to inhuman or degrading treatment that is a breach of children's rights'. While accepting that guidelines do not permit solitary confinement and its use is not *intentional*, the Joint Committee (2019: para. 55) stated: 'Evidence over several years shows that incidents of separation can "drift", so that children end up in what amounts to solitary confinement ... which may be prolonged'. While 'not a policy decision by the Government', its prevention is 'within the power of Government'.

Reframing Priorities

Having considered contemporary evidence regarding the violation of children's rights in secure care and custody, this concluding section argues for fundamental change in responses to children involved in harmful or 'offending' behaviours.

Effective Monitoring and Accountability

The CRC (2016: para. 39) proposed that disaggregated data on the use of restraint should be 'systematically and regularly' collected and published to 'monitor the appropriateness of discipline and behaviour management for children in all settings'. Three years later, the Joint Committee on Human Rights (2019: para. 49–50) expressed concern that published data is incomplete and difficult to interpret, using inconsistent definitions that undermine comparison across institutions. Further, the separation of children in their cells in YOIs is not recorded.

Inspection and reporting processes focus on operational issues and compliance with established regulations. Despite a recent review, the inspection framework for STCs and YOIs (HMIP 2018b) uses the oxymoron 'healthy prisons' tests regarding safety, care, purposeful activity and resettlement. These standards perpetuate a commitment to 'reforming' defective systems. While reform is potentially beneficial to those currently detained, the substantive issue is whether deprivation of liberty addresses children's needs and vulnerabilities, provides necessary support and reduces their involvement in harmful behaviours.

Current monitoring is ineffective in holding state institutions or governments to account. As discussed, the situation in custodial institutions in England and Wales has worsened since the CRC's 2016 examination of the UK Government. The Chief Inspector has expressed concern that previous reports were not taken 'sufficiently seriously', in some cases 'almost completely ignored' (HMCIP 2019: 8). Commenting on self-inflicted deaths in prisons, the Prisons and Probation Ombudsman (2018: 25) stated: 'in many of our investigations we continued to see the same failings and to make the same recommendations as in previous years'. Further, the process of periodic reporting to the CRC has generated persistent criticism and unrealised recommendations, with a lack of sanctions for ongoing noncompliance with international standards.

A fundamental review of the purposes, priorities and processes used by inspection bodies is necessary to ensure that they are effective in holding the state to account. Their independence is essential as is regular feedback and follow-up of recommendations for specific institutions, responsible agencies and government departments. Analysis of systemic factors affecting the treatment and conditions of detained children is vital. This should include detailed information about detained children's experiences, the impact of specific practices (particularly concerning safety and care) and children's suggestions about the support they require while detained and on release. Inspections should promote implementation of international standards and rights-based approaches.

Contextualising Children's Lives

Most children in custody and secure care have endured unhappy and unsafe childhoods. Their rights to an adequate standard of living, the highest attainable standard of health and to access education have been compromised. For many, their rights to protection from violence, abuse, neglect, maltreatment and

exploitation while in the care of their parents, as well as from drug use and sexual exploitation or abuse, have also been breached. In addition to working with these children in ways that neither pathologise nor punish them, interventions must ensure that the adults responsible for children's care and protection in families, communities and state agencies appropriately fulfil these roles (Haydon 2018).

Children's vulnerability requires acknowledgement of the role played by state institutions in its perpetuation. Custodial settings require staff with skills to establish positive, trusting relationships with detained children, de-escalate tensions and manage difficult situations without recourse to restraint, segregation or separation (HMIP 2018b; IICSA 2019). A recently introduced behaviour management strategy seeks 'to provide a positive, child-focused culture and ethos' (Argar, Doyle-Price and Zahawi 2019: 2). Its realisation will require a considerable shift in institutional cultures and professional practices. Following Taylor's (2016) review of youth justice, government proposals have emphasised staff training and qualifications, recruitment to specialist roles, liaison with health services and the development of 'Secure Schools'. Such initiatives, however, 'perpetuate a flawed model rather than being genuinely transformative' and do not 'break down the barriers between the welfare and justice systems' to 'genuinely tackle the reasons for troubled and troublesome behaviour' (Hart 2018: 52, 56).

As a consequence of both inherent and structural vulnerabilities, children and young people have distinct needs and require special protection, but they are not a homogenous group. Their circumstances vary, and those defined 'troubled' or 'troublesome' have complex needs. Policy and professional discourses consistently fail to recognise how the determining contexts of age, class, race, gender, sexuality and disability combine to restrict their opportunities, contributing to their involvement in harmful behaviours. Whatever label is attached to their behaviour, responses focus on addressing perceived deficiencies in the child and their family, with interventions prioritising compensatory provision to support the child's development or to correct behaviour labelled 'harmful', 'antisocial' or 'criminal'. Emphasising the maintenance of 'healthy' development or 'lifestyle choices' and 'successful' transitions, the adult-defined middle-class assumptions underpinning these concepts ignore the structural relations affecting the lives of marginalised children.

Mackenzie, Rogers and Dodds (2014: 13) stress the importance of responding to vulnerability 'in ways that avoid stereotyping and paternalism', alongside resources to promote resilience. They also highlight 'ethical obligations to ameliorate suffering and redress the inequities that exacerbate vulnerability' (Mackenzie, Rogers and Dodds 2014: 3). Without fundamental structural change rooted in social justice principles, children's life chances and capacity to negotiate so-called choices will remain restricted by their socio-economic location. Thus, changes to the distribution of social and economic resources are required to reduce structural inequalities and secure egalitarian outcomes, including access to essential services, decent work opportunities and an adequate standard of living—creating hope through opportunity.

It is also necessary to have alternative responses, which recognise the common situational and pathogenic vulnerabilities experienced by those involved in harmful or 'offending' behaviours. Non-stigmatising, community-based provision should include anti-poverty initiatives; significant investment in youth services plus child and adolescent mental health services, including support for those using substances; long-term family support; therapeutic services that identify and address the underlying causes of harmful behaviour by parents and children. For the minority of children who experience extreme vulnerability, 'safe spaces' offering temporary respite should be provided in small well-staffed units which focus on their personal, social, educational development and wellbeing.

Children involved in antisocial or potentially harmful behaviours often reject concerns about their personal wellbeing. Rather than prioritising 'risk management', professionals need to understand the child's previous experiences, their comprehension of 'risks' in relation to potentially harmful activities or situations and their suggestions for appropriate responses to their involvement in unsafe or 'offending' behaviours. Protection and participation are not mutually exclusive. In fact, children's right to be protected is more likely to be realised if their views about the tension between care and control are considered. They

should be supported to understand and address potentially harmful behaviours in ways that avoid shaming, punishment and criminalisation.

Safeguarding Children's Rights

Despite the UK's ratification of the UNCRC in 1991, it has not been incorporated into domestic legislation in England (although incorporation may not necessarily lead to an improvement in children's lives since negative sociocultural constructions of childhood prevail, undermining the potential for children to be treated equally and with dignity). As Scraton and Haydon (2002: 323) note, it is possible for a government to ratify a Convention based on defensive and proactive statements of rights 'while persisting with, even reinforcing, structural inequalities, pursuing harsh policies and maintaining punitive institutional regimes against the marginalised'. Thus, rights instruments can be criticised as symbolic gesturing rather than vehicles for effective structural change. However, the ethical demands articulated in the UNCRC and other human rights standards provide a sound basis for establishing cultural norms and moral principles that prioritise children's care, protection and participation while recognising their evolving capacities.

The implementation of children's rights requires political commitment to recognising the rights of all under-18s, addressing rights violations and allocating adequate resources to provide necessary support. At a time when the UK's Conservative Government consistently undermines the relevance of human rights, and the COVID-19 pandemic is having devastating social and economic consequences, it is essential that children's rights advocates use 'rights' discourse to present moral and legal arguments for interventions aimed at improving children's wellbeing and development, identify egregious rights breaches and promote rights-based approaches to addressing the vulnerabilities reproduced by structural inequalities.

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² For details about YOIs, STCs and SCHs, see YJB/Ministry of Justice (2019: 38–40) and IICSA (2019: 16–19).

³ For figures concerning the population in youth custody, see Youth Custody Service (2019) and YJB/Ministry of Justice (2019: 40). For those relating to the population in SCHs, see the Department for Education (2019: 1) and the Children's Commissioner for England (2019: 17).

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