

Children's Rights Alliance for England

Transforming Youth Custody: Putting Education at the Heart of Detention

Response from the Children's Rights Alliance for England¹

1. About CRAE

The Children's Rights Alliance for England (CRAE) seeks the full implementation of the UN Convention on the Rights of the Child (CRC) in England. Our vision is of a society where the human rights of all children are recognised and realised. CRAE protects the human rights of children by lobbying government and others who hold power, by bringing or supporting test cases and by using national, regional and international human rights mechanisms. We provide free legal information, raise awareness of children's human rights, and undertake research about children's access to their rights. We mobilise others, including children and young people, to take action to promote and protect children's human rights. Each year we publish a review of the state of children's rights in England.

2. Overview

CRAE welcomes the opportunity to contribute to the Government's review of youth custody. We share the Government's view that the current system is in need of reform. However, we are concerned that the Government's starting-point in carrying out its review is not the right one. In 2010, the coalition Government made a commitment to give due consideration to the Convention on the Rights of the Child (CRC) when making new law and policy. The Government must comply with this commitment when shaping its policy in respect of the juvenile secure estate. The Government cites three drivers for change, namely reductions in reoffending, cost reduction and setting offenders on a path to a better life. While we do not object to these aims, the central objective of any reform to the youth justice system should be to ensure that it respects, protects and fulfils children's rights. We consider that this broader objective would further the Government's stated aims, while also ensuring that the Government is complying with its obligations under international human rights law.

Children do not lose their rights when they come into conflict with the law. On the contrary, the human rights conventions recognise the particular vulnerability of their situation, by affording them an additional set of protections. Therefore, under the international human rights law, children who come into contact with the youth justice system retain their rights in relation to education, health, protection from violence, family life, etc. The CRC is also clear that the aim of the juvenile justice system as a whole must be the child's rehabilitation and social reintegration and that the child's best interests should be a primary consideration in all decisions affecting them.

¹ The contents of this response do not necessarily reflect the view of all CRAE's members

CRAE welcomes the central idea in the consultation that educational provision in the juvenile secure estate should be improved. However we believe that a more ambitious and radical approach is needed to reform of the youth custody system if it is to comply with children's rights. Improving the quality and quantity of educational provisions is only a small, though welcome, part of this.

The implications of international human rights law for *Transforming Youth Custody* are that:

- Measures should be put in place which would significantly reduce the number of children entering custody;
- Custodial settings should take a therapeutic, holistic and individualised approach to meeting all of a child's needs, and securing their rights – this would go beyond just improving education within custody, but would identify each child's individual circumstances and needs– psychological, physical, social, behavioural, educational, cultural, financial and practical – and adopt a tailored programme of rehabilitation to address these needs as a whole, rather than as a set of unrelated and separate elements, or not at all;
- A different approach to youth custody must be accompanied by far better resettlement for children leaving custody. The programme offered to children in custody must be integrated with similar services once a child leaves custody.

As well as complying with its obligations under international law, our proposed approach would be more effective than a narrow focus on education in achieving the Government's stated aims of setting children on a better path and reducing reoffending - it would address the full range of unmet needs which lie behind a child's offending behaviour. In relation to the Government's third aim of reducing costs, while a therapeutic and holistic approach to caring for children in custody is expensive, we envisage that money currently spent on high levels of security could be diverted into covering the costs of holistic care, and that costs could be saved by reducing the number of children in custody. In the longer term, this approach would, of course, also reduce the costs which flow from failing to tackle the needs of vulnerable, disadvantaged and disengaged children.

3. Human Rights Context - Children First, Offenders Second

International law and guidelines impose a number of specific human rights obligations in relation to children in conflict with the law. The CRC contains legally binding obligations which the authorities must respect in designing the youth justice system. In addition, other international instruments, such as the Havana Rules,² the Riyadh Guidelines,³ the Beijing Rules,⁴ the Basic Principles for the Treatment of Prisoners⁵ the Standard Minimum Rules for the Treatment of Prisoners,⁶ and the Council of Europe Recommendation on the European Rules for juvenile offenders subject to sanctions or measures,⁷ contain internationally

² United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("the Havana Rules"), UNGA resolution 45/113 of 14 December 1990

³ United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines"), UNGA resolution 45/112 of 14 December 1990

⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), UNGA resolution 40/33 of 29 November 1985

⁵ United Nations Basic Principles for the Treatment of Prisoners, UNGA resolution 45/111 of 14 December 1990

⁶ Standard Minimum Rules for the Treatment of Prisoners ("Standard Minimum Rules") adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

⁷ Council of Europe (2008) *Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures* ("the European Rules")

accepted standards which elaborate on the rights in the CRC as they relate to juvenile justice. The UN Committee on the Rights of the Child (the UN Committee) has recommended that the UK should fully implement the Beijing Rules, Riyadh Guidelines and Havana Rules.⁸

A number of provisions are particularly pertinent to this consultation, and should be at the heart of the Government's review of youth custody. The need to ensure the child's best interests are a primary consideration in all actions concerning the child (CRC, Article 3) is an overarching principle which permeates the CRC and should guide the implementation of all other rights. Crucially, this means that the traditional objectives of criminal justice (repression/retribution) must give way to rehabilitation and restorative justice objectives in dealing with children in conflict with the law.⁹ The CRC (Article 37) states that detention of children should only ever be used as a measure of last resort and for the shortest appropriate period of time. Those few children who are legitimately placed in custody do not lose their fundamental rights, and must continue to enjoy these to the full extent compatible with their deprivation of liberty. This means that arrangements for children in custody should be such that they are able to ensure children enjoy all of their rights, including adequate food, clothes, shelter, health care, education, family contact, religion and belief, play, privacy and protection from violence and abuse. Article 37 also provides that 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. In short, international law demands that youth custody should be based on principles of care, protection, rehabilitation, reintegration and promotion of the best interests of the child, rather than on punishment. Children should only ever be detained in child-centred environments which have a single joint aim: to provide positive rehabilitation and to meet the child's needs. The custodial environment must be non-punitive, demonstrably distinct in culture and practice from prison establishments and operate to the highest child care and human rights standards.

In 2008, the UN Committee found that our juvenile justice system fails to reflect the best interests of the child.¹⁰ The Government's proposals in *Transforming Youth Custody* fall significantly short of addressing this flaw (as recommended by the UN Committee¹¹). The reform needs to be more firmly rooted in, and driven by the need to implement CRC - in particular, the need to ensure that in dealing with those in trouble with the law their best interests are a primary consideration. Leaving aside how these interests might best be served within a new system (we deal with this later), a fundamental change is needed to the whole philosophy behind the youth justice system. In their report to the UN Committee, the UK Children's Commissioners raised concern that children in trouble with the law are seen as offenders first and children second.¹² The Serious Case Review Panel report in relation to the death of 14-year-old Adam Rickwood who died in custody also highlighted this problem: '*the 'whole [criminal justice] system' treated AR as a child in need of custody, rather than a*

⁸ UN Committee on the Rights of the Child (2008) *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*

⁹ UN Committee on the Rights of the Child (2007) *General Comment No 10: Children's rights in juvenile justice*, para 10

¹⁰ Committee on the Rights of the Child (2008) *Concluding observations on the UK's third and fourth periodic report*, para 26

¹¹ Committee on the Rights of the Child (2008) *Concluding observations on the UK's third and fourth periodic report*, para 27

¹² The UK Children's Commissioners (June 2008) *The UK Children's Commissioners' Report to UN Committee on the Rights of the Child*, para 74

child in need of care.¹³ The fact that the juvenile justice system continues to define children by their criminality rather than their needs not only impacts upon the way society responds to those in trouble with the law, but also has a negative impact on children's own self-image, *'impacting negatively on their ability and willingness to acknowledge their need for help'*.¹⁴ Going forward, a fundamental shift is needed to ensure that the philosophy, policies, practice and regulations in the youth justice system are clearly underpinned by the CRC.

As we have said above, the Government's stated aims in carrying out its review are not objectionable, but they do not go far enough, because they fail to reflect the breadth of the Government's obligations, and children's rights, under the CRC. The Government's objectives translate into a narrow policy proposal to improve educational provision in custody, rather than a system which would be better equipped to meet children's needs and promote their best interests more holistically. Inadequate attention to the requirements of the CRC is illustrated by the reference in the consultation paper to the need to remember a custodial sentence is a punishment, and that the physical environment and regime should reflect this. This runs contrary to the clear statement from the UN Committee that *'the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders'*.¹⁵ The Government's approach to this review must, therefore, be fundamentally refocused to start from the need to respect the rights of children in contact with the youth justice system. To refocus in this way would have three main implications:

- Measures should be put in place to ensure that far fewer children enter custody;
- Custodial settings should take a holistic and individualised approach to identifying and meeting all of a child's needs, and securing their rights;
- A different approach to youth custody must be accompanied by far better resettlement for children leaving custody. The programme offered to children in custody must be integrated with similar services once a child leaves custody.

Each of these is explored below.

4 Custody as a Last Resort / Community Alternatives

A primary objective in the Government's review of youth custody should be to reduce the number of children entering custody. This would both reflect the Government's obligations under the CRC, and help meet the Government's objectives of reducing costs, reducing reoffending, and securing better outcomes for children. In the vast majority of cases, to place a child in custody breaches his or her rights, is highly damaging to his or her well-being and is ineffective in reducing reoffending.

The CRC (Article 37) states that detention of children should only ever be used as a measure of last resort and for the shortest appropriate period of time. This approach is supported in the Beijing Rules (Rule 19.1) and the Riyadh Guidelines (Guideline 46). Rather, children should be diverted out of juvenile justice system. Article 40 of the CRC requires children who have broken the law to be treated in a manner that is consistent with the promotion of the child's sense of dignity and worth, which takes into account the child's

¹³ Serious Case Review Panel (2007) *Report to Lancashire Safeguarding Children Board Report to the Serious Case Review Panel upon the circumstances surrounding the death of AR at Hassockfield Secure Training Centre on 9th August 2004*, p. 12

¹⁴ Office of the Children's Commissioner (June 2011) *'I think I might have been born bad': Emotional wellbeing and mental health of children and young people in the youth justice system*

¹⁵ Committee on the Rights of the Child (25th April 2007) *General Comment 10 on children's rights in juvenile justice*, para 10

age and the desirability of promoting his/her reintegration and encouraging him/her to assume a constructive role in society. It is clear that measures should be promoted for dealing with those in trouble with the law without resorting to judicial proceedings and that community alternatives to institutional care should be available so children can be dealt with in a manner appropriate to their wellbeing and proportionate to their circumstances and the offence (Article 40). Together with Article 37, this provision clearly requires priority to be given to the use of non-custodial or community-based measures as an alternative to detention. This is supported by the Riyadh Guidelines, which recommend the development of community-based interventions and programmes to prevent of children coming into conflict with the law (Guideline 6) and the European Rules which require that, where sanctions or measures are imposed, priority is given to community-based responses that have an educational impact and adopt a restorative approach (Rule 23.2).

Custody does not result in better outcomes for children. The UN Committee has said categorically that '*The use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society*'.¹⁶ The former Commissioner for Human Rights has also emphasised that the detention of children is harmful to their development and health.¹⁷ Continuing high rates of self-harm are testimony to this.¹⁸ Not only does custody result in children being labelled as '*bad and deviant... at a "critical turning point" in the formation of their identities*',¹⁹ but features of custody such as contact with other, often more serious, offenders and removal from any stabilising influences at home can heighten and compound the vulnerability of many young people in custody, even where short periods of detention are concerned. This is exacerbated by other aspects of the custodial regime which would be considered abusive in other settings, including restraint techniques and strip searching.²⁰ Periods spent in such conditions can often have lasting effect on the ability of released prisoners to reintegrate back into families and communities, as can the extensive reluctance of schools and training providers to accommodate young people on release from custody.²¹ Custody is neither productive nor protective, with many emerging even more socially excluded, vulnerable and prone to offending than they were before conviction.

There are also more effective means of reducing reoffending. The underlying causes of offending behaviour in children are best tackled through investment in services beyond the criminal justice system. Full use needs to be made of restorative, community-based alternatives to custody. Restorative justice has been shown to be more effective than custody at rehabilitation and reducing re-offending, and further that it is at least as effective for serious and prolific offenders as it is for low-level crime.²² Priority should be given to the development and use of alternatives to custody which do not criminalise children. In our view, much can be learned from examples of what the Youth Justice Board refer to as

¹⁶ UN Committee on the Rights of the Child (2007) *General Comment No 10: Children's rights in juvenile justice*, para 11

¹⁷ Thomas Hammarberg former Commissioner for Human Rights (19 June 2009) *Children and juvenile justice: proposals for improvements*, para 5.4

¹⁸ 1,725 incidents of self harm in the youth secure estate in 2011/12 are reported by the Youth Justice Board / Ministry of Justice (31 January 2013) in *Youth Justice Statistics 2011/12 England and Wales*

¹⁹ Smith, D. 'The need for a fresh start', in Smith, D. (ed) (2010) *A New Response to Youth Crime*, Devon: Willan Publishing, pp. 12-13

²⁰ 8,419 incidents of restrictive physical intervention were used in the youth secure estate in 2011/12 are reported by the Youth Justice Board / Ministry of Justice (31 January 2013) *Youth Justice Statistics 2011/12 England and Wales*

²¹ See for example Youth Justice Board (2006) *Barriers to engagement in education, training and employment*, p.85

²² Sherman, L. and Strang, H. (2007) *Restorative Justice: the evidence*, Smith Institute

'constructive non-judicial approaches that satisfy victims without criminalising young people'.²³ To reduce the number of children in custody would, of course, also further the Government's objective of reducing the overall costs of custody.

The rules which currently determine whether a child can be placed in custody are not effective in ensuring that custody is used as a last resort. In 2008, the UN Committee concluded that in the UK '*the number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort*'. It recommended both the development of a broad range of alternative measures to juvenile detention and a statutory requirement that detention be used as a last resort and for the shortest period of time.²⁴ While the number of children in custody has reduced significantly, it remains far too high, and children continue to be held in custody inappropriately, in particular for non-violent crimes, and on remand. In 2012, the Youth Justice Working Group found that too often custody '*operates as a 'backstop' for the non-violent and repeat offending children who arguably do not need to be there*'.²⁵ Certain groups of children, such as BME children, are disproportionately represented in custody.²⁶ Efforts to reduce the number of children in custody should focus particularly in addressing these *de facto* inequalities in the system.

To meet the UK's obligations under international human rights law, and in order to promote the Government's own objectives of reducing costs, reducing reoffending and achieving better outcomes for children, the rules must be changed to ensure that far fewer children enter custody. Two measures are necessary in order to achieve this:

- the minimum age of criminal responsibility should be raised significantly;
- a distinct children's custody threshold should be introduced to ensure that only children who have caused serious physical or psychological harm and who are a serious danger to others can be held in custody; and then only when the court is satisfied that no sentence other than a custodial sentence is appropriate and for only the shortest period of time.

At 10 years-old, the minimum age of criminal responsibility²⁷ is lower than the vast majority of other countries and the UN Committee has repeatedly recommended that the UK should raise the minimum age of criminal responsibility.²⁸ Such an approach is supported by other international human rights standards, including the Beijing Rules which state that the minimum age should not be fixed at too low a level.²⁹ The Committee against Torture (the CAT Committee) has expressed concern over low minimum ages of criminal responsibility,

²³ Youth Justice Board (2007) *Towards A Youth Crime Prevention Strategy - Draft for consultation*

²⁴ UN Committee on the Rights of the Child (2008) *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*

²⁵ Youth Justice Working Group (January 2012) *Rules of Engagement: Changing the heart of youth justice, A policy report*, The Centre for Social Justice, p.18

²⁶ Murray, R. (December 2012) *Children and Young People in Custody 2011–12 An analysis of the experiences of 15–18-year-olds in prison*, HM Inspectorate of Prisons and Youth Justice Board

²⁷ Children and Young Persons Act 1933, s.50

²⁸ See most recently UN Committee on the Rights of the Child (2008) *Concluding Observations United Kingdom of Great Britain and Northern Ireland*, para 78

²⁹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice – The Beijing Rules, adopted by General Assembly resolution 40/33 of 29 November 1986, Rule 4

including by advising New Zealand that the age of 10 is too low and recommending an increase in line with international standards.³⁰

A distinct custody threshold should be introduced in law to ensure that only children who have caused serious physical or psychological harm and who are a serious danger to others can be held in custody; and then only when the court is satisfied that no sentence other than a custodial sentence is appropriate and for the shortest period of time. In determining whether a custodial sentence is appropriate, consideration ought to be given to non-custodial alternatives, taking into account the best interests of the child and their individual needs and circumstances, in line with obligations under the CRC. The Beijing Rules provide that '*before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority*' (Rule 16). In particular, children with mental illness must be treated in the health service by trained mental health professionals, and must not find themselves in custody as a result of their illness.

5. A Holistic Approach to Care In Custody

CRAE welcomes the central idea in the consultation that there should be a greater focus on education in the juvenile secure estate. However we believe that a more ambitious and radical approach is needed to reform of the secure estate if the youth custody system is to comply with children's rights. Improving the quality and quantity of educational provisions is only a small, though welcome, part of this. Any new system of youth custody must take a holistic approach to identifying and meeting all of the needs of children entering custody.

Children are inherently vulnerable by virtue of their age and developmental immaturity. However, those children who come into contact with the law are often additionally vulnerable due to social and educational disadvantage and a range of physical, psychological and emotional difficulties. This is not limited to a small minority of the custodial population. There is a significant body of research profiling those in custody³¹ and, as the consultation paper highlights, this demonstrates that the majority of children and young people in custody in England and Wales have complex needs and vulnerabilities. A holistic approach to caring for children in custody is founded on the notion that the child's offending behaviour cannot be divorced from these wider circumstances and conditions and that the prevention of offending depends, at least in part, on effective action to address the child's underlying and complex needs. As highlighted by Lord Judd more than a decade ago:

*Too many who should know better would still have us believe that the cause of a crime is simply the person who commits it. That superficiality is unworthy of a civilised society. The real causes and origins include poverty, deprivation, exclusion, inadequate parenting, broken families, abuse, poor education and the rest. There are no shortcuts. If we want to succeed, we must have an holistic social approach.*³²

A more holistic and therapeutic approach must be taken to the care of children in custody, which would tackle the child's offending behaviour where it starts, with the unaddressed needs of the child. The services offered in custody should view each child in the round and

³⁰ Committee Against Torture (4 June 2009) *Concluding Observations New Zealand* CAT/C/NZL/CO/5, para 8(a)

³¹ Jacobson J., Bhardwa B., Gyateng T., Hunter G., Hough M. (2010) *Punishing Disadvantage: a profile of children in custody*, Prison reform Trust

³² HL, 21 November 2002, c. 537

take a holistic approach to tackling all of the individual's specific needs – psychological, physical, social, behavioural, educational, cultural financial and practical - and securing their rights.

Whilst children in custody might share some characteristics, they are not a homogenous group. They are all individuals with a wide range of different life experiences, and their own set of multi-layered often complex problems and needs. These must be individually identified and addressed, and each child should benefit from a comprehensive tailored programme of rehabilitation appropriate to all of his or her needs. While these will vary from child to child, the successful rehabilitation and re-integration of children in custody into society demands that they are equipped not only with literacy and numeracy skills but a full range of life management skills - cognitive behaviour skills, life skills, and financial planning skills. Appropriate therapy and support should also be available for issues such as mental and physical health, family and peer relationships, emotional wellbeing, and drug and alcohol problems - whether this be individual counselling, family counselling, social skills courses, therapeutic programmes to treat drug and alcohol addiction and behavioural issues, speech therapy or services of a more practical nature to help them sustain jobs, relationships and housing and manage financial issues. Particular emphasis should be placed on work with the families of children in custody, to tackle any family problems that are at the origin of a child's needs. The benefits of this have been shown to include increased engagement in services, education, training and employment, strengthening the family unit and reduced offending.³³ Such work can also ensure that families, an important source of support for a child during and post custody, are given important guidance and support in furthering the child's rehabilitation and reintegration. Education would form an important part of any such programme, but should be provided as a complement to, and not in isolation from, these wider rehabilitation measures. Specific comments are made in relation to education below.

In order to be effective, a more holistic therapeutic approach requires joined up working between all professionals, services and agencies involved in the care of children in custody – in much the same way as systems cooperate when working to support children with special educational needs or in the context of the child protection system. The relevant professionals, services and agencies must work collaboratively and communicate with one another to ensure the different aspects of the holistic package complement each other. This has been recognised the Youth Justice Board in their review of effective interventions and services in the youth justice context:

*[E]ffective intervention programmes are multi-modal and based upon a holistic assessment of young people's needs.... we know that interventions that tackle aspects of offending behaviour in isolation from the reality of young people's lives are unlikely to be effective.*³⁴

In this regard, the report goes on to note that issues such as education, employment and training, substance misuse and mental health needs are interrelated problems or issues that cannot be effectively addressed in isolation.³⁵

Key features of a more holistic therapeutic approach to caring for children in custody are that it:

³³ Ministry of Justice and Department for Children, Schools and Families (2009) *Reducing Offending: supporting families, creating better futures*

³⁴ Mason, P. and Prior, D. (2008) *Engaging People who offend*, Youth Justice Board, p. 13

³⁵ Mason, P. and Prior, D. (2008) *Engaging People who offend*, Youth Justice Board, p. 14

- Takes a more welfare-based, social justice outlook to offending;
- Is based on the principle of the best interests of the child;
- Is tailored to individual needs, and offers flexibility;
- Fits services to the needs of the individual child, not the child to services;
- Focuses on comprehensively addressing the broad spectrum of needs individuals and families have, which can be linked-to re-offending – psychological, physical, social, behavioural, educational, cultural, financial and practical;
- Proposes a joined together collaborative multi-agency approach;
- Requires timely intervention which continues beyond release.

The international agreements to which the UK has signed up explicitly support a holistic approach to addressing the needs of children in custody. The established aim of the juvenile justice system as a whole in international human rights law is the child's rehabilitation and social reintegration. This is in particular clear from article 40(1) of the CRC, which reads:

States Parties recognize the right of every child alleged as, accused of, or recognized 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.

The objective of any training and treatment of young people in custody is to help them assume socially constructive and productive roles in society (Beijing Rules, Rule 26.1). As such, favourable conditions must be created to allow their reintegration into society under the best possible conditions and with the participation and help of the community and social institutions (UN Basic Principles for the Treatment of Prisoners, Article 10). The Beijing Rules call for institutionalised children to receive the care, protection and all necessary assistance they may need because of their age, sex, and personality and in the interest of their wholesome development - social, educational, vocational, psychological, medical and physical.³⁶ Similarly, the Standard Minimum Rules³⁷ and the UN Basic Principles for the Treatment of Prisoners³⁸ call for all appropriate measures to be put in place - including education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character - according to the individual needs of each child.

The holistic approach is, therefore, in-line with the Government's obligations under international human rights law to ensure that youth custody is distinct, child-centred and

³⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, UNGA resolution 40/33 of 29 November 1985, Rule 26.2

³⁷ Standard Minimum Rules for the Treatment of Prisoners adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 66(1)

³⁸ United Nations Basic Principles for the Treatment of Prisoners, UNGA resolution 45/111 of 14 December 1990, Article 6

focused on rehabilitation and social-reintegration. It will also further the Government's own objectives, of reducing reoffending and securing better outcomes for children. The Government's third objective is to reduce the costs of the juvenile secure estate. In the longer-term, this approach will reduce the costs on society which would otherwise flow from a failure to address the disadvantages and vulnerabilities affecting children in custody. Costs can be saved in the shorter-term if our proposals for a holistic approach to custody are accompanied by measures to reduce the number of children in custody, and if the costs of maintaining high-security are diverted into therapeutic services for children.

Necessary features of a more holistic approach to care in custody are dealt with below.

5.1 Physical Environment

In addition to the services provided to them, a young person's well-being and rehabilitation is dependent on their living conditions in the secure estate. In addition to playing a key role in keeping children safe, the location, size, physical layout, space and functional suitability of the custodial setting are important factors in a child's rehabilitation.

Small, local institutions tend to offer the best outcomes for children in custody.³⁹ The current shortage of appropriate placements within a reasonable distance of a child's home is well documented,⁴⁰ with recent figures showing that as at March 2011, 30% of children were held over 50 miles from home, 10% of whom were over 100 miles away.⁴¹ This presents numerous challenges for successful resettlement and rehabilitation, not least the logistical difficulties in terms of working with, and getting support from, families, social workers and other key professionals⁴² during detention and following release. This can also hinder the continuity of educational and vocational work. We acknowledge that there is an inherent tension between local provision and specialist provision, particularly if, as we recommend, the number of children in custody are to be significantly reduced. We would encourage the Government to explore the possibility of locating small locked units in larger unlocked settings as a means of addressing this tension. If specialist centres are not to be local, appropriate arrangements must be put in place to facilitate contact between families and children living in custody far away from home.

Children should only be held in custody in small multi-functional units. A review of youth justice by the Centre for Social Justice found institutional size to be an '*important determinant of culture*'.⁴³ This is a view shared by the former HM Chief Inspector of Prisons, Anne Owers, who, in giving evidence to the Justice Committee's enquiry into effective sentencing, suggested that it is '*very evident*' that, on measures of safety, respect, purposeful activity and resettlement, smaller prisons are more effective: '*[T]hat is because they provide an environment in which people are known, in which relationships can develop, in which people are often closer to home*'.⁴⁴ The Havana Rules also provide that facilities should be '*small-scale*' and '*the number of juveniles detained in closed facilities should be small enough to enable individual treatment*' (Rule 30).

³⁹ Justice Committee (2013) *Seventh Report: Youth Justice*

⁴⁰ See: Independent Commission on Youth Crime and Antisocial Behaviour (2010) *The report of the Independent Commission on Youth Crime and Antisocial Behaviour*, p. 79

⁴¹ HM Inspectorate of Prisons/Youth Justice Board (2012) *Children and young people in custody 2011/12: An analysis of the experiences of 15-18 year olds in prison*, p. 17

⁴² Ofsted (August 2010) *Admission and discharge from secure accommodation*

⁴³ Centre for Social Justice (2012) *Rules of engagement; changing the heart of youth justice*, p. 136

⁴⁴ Anne Owers in Justice Committee (2008) *Towards effective sentencing Fifth Report of Session 2007–08*, 184-ii, Q375

The UN Committee has said that '*[c]hildren should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities*'.⁴⁵ Children's rights will best be met, and their rehabilitation promoted, in an environment that promotes a sense of normality - as one child put it (in relation to communal meal times specifically) '*you learn to do what normal people do on the out*'.⁴⁶ This requires a homely, personal environment. As noted by Lord Carlile of Berriew '*it is within something that is much more like home that children learn the habits of a home*'.⁴⁷ The physical environment in most custodial settings currently in use is unsuited to the rights-based aims of the juvenile justice system. The design and layout of Young Offender Institutions (YOIs) and Secure Training Centres (STCs) are based on the model of adult prisons, with small, spartan cells and communal areas that are designed for security and control. As highlighted by the Office of the Children's Commissioner⁴⁸ the use of prison-style accommodation for children in custody (by way of YOIs) cannot meet children's mental health needs. Similarly the Children's Commissioner has expressed concern in the past about the impact of barren and bare living areas on children's feelings of wellbeing and self-esteem.⁴⁹ The physical environment in which children are held in custody must promote a culture of care and rehabilitation as an aid to positive learning and development. Units need to be designed with the well-being and welfare of children in mind and a more creative approach needs to be taken to how living conditions can be made less oppressive and prison-like and more homely and child-friendly, without compromising safety.

5.2 Staff

Whatever the system in place, its effectiveness can only be as good as the people who are bringing it into effect on a daily basis. If a more holistic approach is to be successful in securing better outcomes for children, it must be delivered by highly-trained and qualified, well-paid staff, who like children, want to work with them, and are able to relate to them. A high staff-child ration is also essential.

In research carried out by CRAE,⁵⁰ children in custody highlighted their desire to change the way staff interact with, and relate to, young people in custody, to change the types of people who work in youth custodial settings and for staff to understand young people and be able to relate to them. They developed a person specification for staff working in youth custodial settings, which included liking young people and wanting to interact with them, as well as an understanding of what makes young people happy and/or angry.⁵¹

⁴⁵ UN Committee on the Rights of the Child (2007) *General Comment No 10: Children's rights in juvenile justice*, para 89

⁴⁶ Chambers, J. (September 2011) *Enough on their plate food in young offender institutions for 15-17 year old boys*, Prison Service Journal, Issue 197, p. 55

⁴⁷ HL, 7 November 2011, c. 94

⁴⁸ Office of the Children's Commissioner (November 2011) *Submission to the UN Human Rights Council Universal Periodic Review*

⁴⁹ Office of the Children's Commissioner (June 2011) '*I think I must have been born bad*' – *Emotional well-being and mental health of children and young people in the youth justice system*, p. 50

⁵⁰ CRAE (January 2013) *Speaking freely Children and young people in Europe take action on ending violence against children in custody: Campaign report*

⁵¹ The full list of qualities an officer should have and their key responsibilities can be accessed at http://www.crae.org.uk/assets/files/Ending%20Violence%20Campaign%20report_condensed.pdf

Many children in custody are currently under the control of staff that have no specific desire to work with children, and have little training on how to do so effectively. This can create an ethos which is insufficiently children-centred, and emphasises security and control, rather than child welfare.⁵² Staff need to be committed to working with children, and have experience and expertise in doing so, rather than a background in security and prison work. They should also be adequately trained and qualified to deal with the challenges presented by children in custody and to work with them in a therapeutic way to meet their needs. The UN Committee has emphasised the importance of training for staff working with children in the juvenile justice system: '*The training of professionals... is crucial and should take place in a systematic and ongoing manner. These professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children*'.⁵³ This is critical to providing a distinct secure estate equipped to meeting the specific needs of children.

High staff to child ratios are necessary to effectively care for children in custody and meet their needs. Higher ratios allow closer and more trusting relationships to be built, which are key to effective rehabilitation.⁵⁴ Research indicates that lower staff ratios affect children's behaviour, as both the low numbers and the underlying ethos they reflect lead to an over-emphasis on security and greater use of restraint and punitive sanctions,⁵⁵ which undermine rehabilitative measures. Lower ratios reduce the likelihood of children being out of their 'cells', reducing the opportunity for engagement in rehabilitative activities - YOIs have the lowest staff to child ratios and the highest numbers of hours in their cells.⁵⁶ The current secure estate lacks the high ratio of staff to children that is required to address individual needs and accordingly provide effective rehabilitation, with YOIs for boys having as few as three to six staff to 30 to 60 boys.⁵⁷ This needs to be addressed as a matter of priority, to better reflect the position in SCHs, one of the qualities of which has been noted to be the high ratios of well trained staff, specialist staff who understand children.

5.3 Education

Education is vital to the rehabilitation and reintegration of those in youth custody and to their healthy and purposeful development. We therefore welcome the recognition in the consultation of the important role that education and vocational skills can play in effective interventions and the commitment to improve education in the custodial system. However, the more holistic approach to caring for children in custody described above is a necessary prerequisite to improving educational outcomes for children in custody, as children will only be able to learn if their wider needs, which often act as barriers to learning, are met.

Article 29 of the CRC insists on a holistic approach to education so that '*the educational opportunities made available reflect an appropriate balance between promoting the physical, mental, spiritual and emotional aspects of education, the intellectual, social and practical*

⁵² SCYJ (March 2008) *Criminal justice and Immigration Bill: House of Lords Report Stage Briefing - Accommodation in which persons aged under 18 may be detained*

⁵³ UN Committee on the Rights of the Child (2007) *General Comment No 10: Children's rights in juvenile justice*, para 40

⁵⁴ Gyateng, T., Moretti, A., May, T. and Turnbull, P. (2013) *Young people and the secure estate: Needs and interventions*, Youth Justice Board

⁵⁵ Howell, J. (2003) *Preventing and reducing juvenile delinquency: a comprehensive framework*; and The Howard League for Penal Reform () *Future Insecure: Secure children's homes in England and Wales*

⁵⁶ HC, 11 Jan 2010, c. 800W

⁵⁷ Gyateng, T., Moretti, A., May, T. and Turnbull, P. (2013) *Young people and the secure estate: Needs and interventions*, Youth Justice Board

dimensions, and the childhood and lifelong aspects'.⁵⁸ The UN Committee recognises that the skills every child needs to learn include not only basic literacy and numeracy skills but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.⁵⁹ This approach is supported by the Riyadh Guidelines which make it clear education extends beyond mere academic and vocational training and that in addition particular attention needs to be dedicated both to involving young persons as active and effective participants in, rather than mere objects of, the educational process and to providing them with positive emotional support (Guideline 21). Educational systems should devote particular care and attention to those who are at social risk. In this regard, specialised prevention programmes and educational materials, curricula, approaches and tools should be developed and exploited to the full (Riyadh Guidelines, Guideline 24).

The need to improve education in the secure estate well documented. Key concerns are the extent, variety, suitability and quality of the educational provision in custody. The Havana Rules are clear that every young person in custody has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society (Rules 38). Children in custody should not leave detention at an educational disadvantage (Beijing Rules, rule 26.6). Currently, many children in custody are unable to access education suitable for their needs, abilities and interests. Custodial settings must offer a broader variety of educational options, to be suitable for a wide range of educational abilities, learning-styles, and the varying interests of children in custody. The choice of subjects available to children in custody must go beyond basic skills and academic subjects, and must recognise that traditional teaching methods will not be appropriate for all children. Educational packages must be tailored to individual needs and interests. Because many of the children in custody have been disengaged from education for a long time and are highly de-motivated by their educational experiences so far, it is important that such children can be engaged in something in which they are interested and that they can complete bite-sized chunks of learning, to give children an early taste of success. Provisions should also be made for children who need a higher level of education, and to promote continuity between studies inside and outside of custody. Committed and skilled teachers must be employed in custodial settings. Children with special educational needs (SEN) who are in custody should be offered the same level of support that is given to other children with SEN.

6 Resettlement

Reform of the custodial system will be futile unless accompanied by significant improvements to resettlement practice. The benefits of a holistic approach to caring for children in custody must not be undone by lack of continuity of care. It is essential, therefore, that the reformed system connects the holistic programme of rehabilitation provided in custody with similarly comprehensive efforts at community level following release.

In its most recent report on youth justice,⁶⁰ the House of Commons Justice Committee endorses the aim of improving the basic literacy of those in custody, but is not persuaded of the value of focusing resources on the secure estate given that 79 days is the average

⁵⁸ UN Committee on the Rights of the Child (2001) *General Comment No. 1 Article 29(1): The aims of education*, para 12

⁵⁹ UN Committee on the Rights of the Child (2001) *General Comment No. 1 Article 29(1): The aims of education*, para 9

⁶⁰ House of Commons Justice Committee (2013) *Seventh Report of Session 2012-2013 Youth Justice*, para 128

current length of stay. It notes that poor resettlement and aftercare for children in the secure estate has long been identified as one of the major factors influencing reoffending and argues the greater focus should be on improving transition between custody and the community.⁶¹ This is a view we share. Any time of transition is important but particularly so for those who have been in custody. Albeit made in the context of transitions from youth to adult services, the sentiment expressed by HM Inspectorate of Probation, the lead inspectorate, HM Inspectorate of Prisons, the Care Quality Commission, Estyn, Healthcare Inspectorate Wales and Ofsted is equally true in the context of transition back to the community on release:

*Transitions matter. They are important rites of passage which, if successfully negotiated, can advance a young person's journey to adulthood. For young people who offend, this period can be problematic and signify changes in key relationships, often at a time of peak reoffending. Effectively handling the many transitions that young people in the criminal justice system have to make is challenging but of paramount importance.*⁶²

Whilst the current consultation does make reference to the need to close the gap between custody and community, its primary focus is on services provided whilst in custody and it fails to acknowledge the impact of existing poor resettlement practice. Programmes within custody will only affect children's behaviour if the external environment supports them on release. Notwithstanding this, the transition is currently not smooth for a large number of young people; a significant number do not receive adequate support in relation to accommodation, resulting in disengagement from services (and reoffending)⁶³ and arrangements for continued education and training and preparation for release and independent living have been shown by Ofsted to be unsatisfactory (with the exception of those released from secure children's homes).⁶⁴

Young people who have been in the secure estate cannot be expected to simply pick up where they left off before detention and succeed. On return to the community, many often face not only their earlier challenges – for example in terms of accessing appropriate training and education, family break-down, violence and abuse, unemployment - but also additional or increased barriers associated with their time in custody, not least social exclusion because of the stigma attached to having been in trouble with the law. It is therefore essential that the positive work achieved during custody is not undone by a lack of continuity of care. As such, any reform of the system of youth custody (and the youth justice system more widely) must ensure a joined up system which connects the holistic custodial programme of rehabilitation with similarly comprehensive efforts at community level post release. Custodial and post-release services need to be co-ordinated and share the same aims and objectives, so as to ensure interventions are more effective. There are also young people for whom a return to their previous communities is counter-productive, and who want to reinvent themselves in a different place. Their needs should be addressed. Further, there needs to be sufficient forward planning to ensure the transition from a structured to a less structured environment is properly managed; time and again, the absence of a clear plan for the young person on their release and the surrounding uncertainty has resulted in their

⁶¹ House of Commons Justice Committee (2013) *Seventh Report of Session 2012-2013 Youth Justice*, para 129

⁶² A Joint Inspection by HMI Probation, HMI Prisons, Care Quality Commission, Ofsted, Healthcare Inspectorate Wales and Estyn (October 2012) *Transitions: An inspection of the transitions arrangements from youth to adult services in the criminal justice system*, p. 3

⁶³ Glover, J. and Clewett, N. (February 2011) *No Fixed Abode: The housing struggle for young people leaving custody in England*, Baranardo's

⁶⁴ Ofsted (May 2010) *Transition through detention and custody*, p.6

behaviour deteriorating.⁶⁵ Children leaving custody need to be provided with an appropriate level of ongoing support and guidance and to be made aware of where they can obtain further support and guidance if needed.

We would therefore urge the Government to establish a national policy agenda which supports a properly funded resettlement programme for young people leaving custody. Ideally any such transitional programme would allow for phased release back into the community. However, as a minimum, in terms of general principles, resettlement and reintegration services should:

- Be located in the community where the young person lives (unless the child opts for a new start elsewhere);
- Be based on the same individualised holistic approach to addressing each young person's diverse needs;
- pay particular attention to those risk factors identified as being relevant to the individual in terms of reoffending;
- Include timely pre-release planning as an integral part of the secure placement to allow relevant resources and services to be identified and avoid any later break in continuity of care and support. That these are developed immediately on entering custody in every case is especially important given juvenile sentences are generally only a few months in length;
- Cater for (continued) access to essential services and support and create meaningful opportunities;
- Include active case management;
- Include consistent support from one trusted adult;⁶⁶
- Provide for the release plan to be reviewed and modified throughout custody as circumstances warrant;
- Ensure parents (if appropriate) and other significant adults, service providers and the children themselves are all involved in determining post-release arrangements;
- Ensure young people are kept informed and involved at every stage of the rehabilitation and resettlement process.

7 Participation

We note and welcome the Government's commitment to consulting with young people in relation to this paper. However, it is important that a culture of participation underlies the whole youth justice system and, specifically in relation to this consultation, within the practices and procedures of any new secure estate, whatever form it ultimately takes. As such, children should have an opportunity to comment on and influence the plans that are

⁶⁵ Ofsted (May 2010) *Transition through detention and custody*, paras 63 and 46 respectively

⁶⁶ Emphasised as important by young people surveyed. See Barnardo's (September 2008) *Locking up or giving up - is custody for children always the right answer?* p.6

made for them whilst in custody, including being meaningfully involved in their own case planning - identifying their needs and being given an opportunity to influence the exact nature of their holistic programme of rehabilitation and reintegration. This is inline with Article 12 of the CRC, according to which the authorities must '*assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child*', and must give '*due weight*' to these views '*in accordance with the age and maturity of the child*'.

A participative approach would also achieve better results. Asked what they considered to be the best way of motivating young people to engage with education, training and employment programmes during their time in custody and to continue with them upon their release, youth offending teams cited the need to increase young people's 'ownership' of plans.⁶⁷ Young people quickly become disinterested or disengaged from interventions, if they do not feel valued or listened to⁶⁸ and so as NACRO suggests:

*[w]hether the youth justice system works for individuals effectively can depend on their involvement in assessment, planning, implementation and review. The more that participation principles are adhered to, the better the chance of success.*⁶⁹

We would therefore urge the Government to make it clear in policy and guidance that upholding and protecting a children's participation rights is one of the basic principles of the secure estate and that existing practice needs to better embrace a child's views and wishes; children in custody need to be active and meaningful participants in shaping the services they receive and setting their own objectives whilst in custody. Particular care needs to be taken, given the prevalence of communication disorders amongst those in custody,⁷⁰ to put in place appropriate mechanisms to enable those views and feelings to be listened to and seriously considered.

8. International Experience

Much can be gained from the experiences of other jurisdictions which take a holistic approach to caring for children in conflict with the law. The Multifunctional Treatment in Residential and Community Settings programme (MultifunC) in Scandinavia is a residential treatment model for adolescents with serious behaviour problems (importantly, where it is considered they cannot benefit from home-based treatments).⁷¹ Based on research about predictors of anti-social behaviour, MultifunC involves a temporary placement at a MultifunC unit, followed by targeted follow-up work after they leave, in each case providing structured support both to the young person and their family. Currently implemented through 9 institutions (5 in Norway, 2 in Sweden and 2 in Denmark), of the 70 % who have completed the whole treatment programme (including the integrated aftercare), the success rate is

⁶⁷ Youth Justice Board (2006) *Barriers to Engagement in Education, Training and Employment*, p.77

⁶⁸ Youth Justice Board (2008) *Assessment, Planning Interventions and Supervision. Key Elements of Effective Practice*, p.8

⁶⁹ NACRO (June 2008) *Youth Crime Briefing Principles of Participation for Youth Justice*, p.6

⁷⁰ Hughes N., Williams, H., Chitsabesan, P., Davies, R. and Mounce L. (2012) *Nobody made the connection: The prevalence of neurodisability in young people who offend*, Children's Commissioner, p. 9-10

⁷¹ More information can be found at http://www.multifunc.org/html/english_.html

about 60 to 70 %, with success assessed by a positive change in school or work and family function, the absence of re-offending behaviour and no further placements.⁷²

The programme's aim is to change the young person's behaviour within the community and a holistic approach is taken to targeting known risk factors for antisocial behaviour. In addition, individual characteristics such as social skills, mental capacity, depression and anxiety are addressed. The programme also recognises that risk factors are found both within the individual and in his or her environment and so intervention is directed at external factors like the young person's family, relations to peers, school and neighbourhood, based on their association to the young person's behaviour in each case. This holistic approach is reflected in the comprehensive team responsible for each young person: a psychologist, 2 social educators, a teacher from the pedagogical team and 1 or 2 family therapists.

Several aspects of the programme are in our view particularly worthy of note (especially in light of our earlier comments):

- The units are small (8 juveniles in each)
- The ratio of staff to children is high
- Time within the unit should be as short as possible and connected to community services given the risk of negative influence from others on the programme. The units are therefore open units closely connected to the community - local schools, leisure activities and peers
- The programme acknowledges that whilst there will be some shared characteristics, each young person is an individual with different needs and these must be assessed and integrated into the treatment plans
- Similarly, it works on the basis treatment should be tailored to the young person's learning style
- It regards participation of the young person (and their family) in all decisions about the treatment planning and process as indispensable in guaranteeing effective change
- A key principle is that the programme should be seen as part of a continuum of services; aftercare is (based on research) considered equally important to, and an integral and obligatory part of, the treatment process. Multifunc therefore includes a time limited period in a residential setting followed by an integrated period of aftercare which is planned at the time the young person's needs are first assessed
- The young person's parents are seen as important and are involved in treatment decisions, are trained in their role as parents (for example how to communicate and control their children in a supportive way) and helped once the young person has moved back home

⁷² See http://www.multifunc.org/html/english_.html. Although this figure is given in relation to Norway, the Head of the project has (via a video-link presentation on 11 April 2013) confirmed the same success rate (about 70%) across the various institutions