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1 Who are we?

11 MILLION is a national organisation led by the Children's Commissioner for England, Professor Sir Al Aynsley-Green. The Children's Commissioner is a position created by the Children Act 2004.

The Children Act 2004

The Children Act requires the Children's Commissioner for England to be concerned with the five aspects of well-being covered in *Every Child Matters* – the national government initiative aimed at improving outcomes for all children. It also requires us to have regard to the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC underpins our work and informs which areas and issues on which we focus our efforts.

Our vision

Children and young people will actively be involved in shaping all decisions that affect their lives, are supported to achieve their full potential through the provision of appropriate services, and will live in homes and communities where their rights are respected and they are loved, safe and enjoy life.

Our mission

We will use our powers and independence to ensure that the views of children and young people are routinely asked for, listened to, and acted upon and that outcomes for children improve over time. We will do this, in partnership with others, by bringing children and young people into the heart of the decision-making process to increase understanding of their best interests.

Our long-term goals

1. Children and young people see significant improvements in their wellbeing and can freely enjoy their rights under the United Nations Convention on the Rights of the Child (UNCRC).
2. Children and young people are more highly valued by adult society.

For more information

Visit our website for everything you need to know about 11 MILLION:
www.11MILLION.org.uk

2 Executive summary



11 MILLION is extremely concerned about the over-use of restraint within the juvenile secure estate. We are particularly worried about the impact this has on children in terms of the high risk of both physical injury and psychological harm. The use of restraint must be viewed within the context of a highly punitive youth justice system which is criminalising increasing numbers of children, with high numbers of vulnerable children entering custody.

We are concerned that restraint is being used as something other than a last resort, and there is evidence that it is being used to punish children and ensure compliance. We are worried that the recent amendment to the Secure Training Centre rules widens the circumstances in which restraint may be used. The use of violence and force to control and punish some of the most vulnerable children in society is unacceptable. We believe that the way restraint is practiced in some secure establishments clearly breaches the United Nations Convention on the Rights of the Child (UNCRC) and may, in some circumstances, contravene the European Convention on Human Rights.

Recommendations

- The use of restraint on children should comply fully with the standards of the UNCRC and be used as a measure of last resort only when the child poses an imminent threat of injury to themselves or others.
- Restraint should never be used as punishment, to maintain order or to impose the authority of staff over children.
- The recently changed rules on the physical restraint of children held in Secure Training Centres are in breach of international human rights standards and should be amended immediately.
- What is urgently needed is a full-scale evaluation of restraint methods with a view to identifying and adopting the most effective, safe and least damaging approach across all settings with children. This should be in line with international human rights standards for children. This approved set of restraint methods should be applied consistently across the secure estate.
- As well as appropriate staffing levels, there should be high levels of quality, child-centred training given to all staff. There needs to be more emphasis on how to diffuse and manage challenging behaviour, as well as actions to prevent such situations from arising in the first place. Also, training ought to include how to develop trusting and respectful relationships between staff and children, paying due attention to children's physical and emotional needs.

- Nationally, there needs to be co-ordinated monitoring of all incidents of restraint in the juvenile secure estate. This must include recording the child's ethnicity, gender and any injuries they suffer as well as the child's views. The psychological impact of restraint should also be closely monitored; this is particularly important as such trauma can be more difficult to detect.
- Children and their parents/carers should be informed of the restraint policy of the establishment: the methods used and the safeguards that are in place.
- Batons, or any other implements or weapons, should never be used on children and should not be issued to staff in the juvenile secure estate.
- Clear statutory thresholds on the use of custody should be put in place in order to ensure that custody is used as a last resort for children.
- In the long term, we would like to see children taken out of prison service and Secure Training Centre custody, and for the small number who may need detention, due to public or their own safety, to be detained for the shortest time possible in Local Authority Secure Children's Homes.
- There needs to be a root and branch review of the whole juvenile justice system addressing the increasing criminalisation of children and the over-use of custody, with a view to bringing the youth justice system in line with the UNCRC and other international human rights standards for children.



3 Introduction

11 MILLION welcomes the opportunity to respond to the independent review of restraint in juvenile secure settings and feels this review is long overdue. In this response we will begin by stating our views on the use of restraint on children within the wider context of the youth justice system and the background of children in custody. We will then outline our views and concerns about the current restraint regimes across the juvenile secure estate and outline our recommendations.

The youth justice system

11 MILLION believes that the review of restraint needs to be seen within the context of England's current youth justice system. The age of criminal responsibility in this country remains amongst the lowest in Europe and we are seeing increasingly more children criminalised and brought into the system at a younger age for lesser offences. The youth justice system is dominated by a punitive approach, and the principle of primary consideration for the best interests of the child as advocated in the United Nations Convention on the Rights of the Child (UNCRC) is not being applied to children in this system. Children in trouble with the law are regarded as offenders first and children second. The UK has one of the highest rates of child custody in Europe. This has resulted in severe criticism from, among others, the United Nations Committee on the Rights of the Child and the Council of Europe Human Rights Commissioner, who said:

“the overall impression I obtained was of a detention system that placed too much emphasis on punishment and control and not enough on rehabilitation.”¹

The harmful impact of custody on children is well recorded, with many children feeling unsafe² and experiencing high levels of intimidation, violence and abuse.³ The second joint chief inspectors' report on safeguarding expressed concern about behaviour management, as well as the over-use of physical control, strip-searching and segregation.⁴ It is unacceptable that 30 children have died in custody since 1990 and yet there has never been a public inquiry. The failures of the current system were highlighted in the findings of the serious case review panel's report into the death of Adam Rickwood in Hassockfield Secure Training Centre. This report found that:

“the ‘whole [criminal justice] system’ treated AR as a child in need of custody, rather than a child in need of care”.⁵

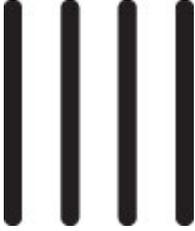
Children in custody

11 MILLION does not believe that there is sufficient attention paid to, or understanding of, the fact that the majority of children who end up in custody are disadvantaged, vulnerable and amongst the most damaged, with many having mental health problems and/or learning

disabilities. It is estimated that between 46-81%⁶ of children in custody have mental health problems; and one study found that 96%⁷ of male remand young offenders had at least one psychiatric disorder. In addition, 35% of males and 49% of females in secure establishments are dependent on drugs⁸. There is also an over-representation of children in custody with a care background, and almost half the children in custody have literacy levels below the average 11 year old.⁹ For many of these children, prison service and Secure Training Centre custody is highly inappropriate and damaging, and it is critical that alternatives are found.

There is an urgent need to review and change the way we deal with children in trouble with the law, and to establish a youth justice system that fully complies with the UNCRC and other relevant international standards.

4 The use of restraint on children



There is evidence of the over-reliance on and over-use of restraint and force on children in custody, particularly in Young Offender Institutions (YOIs) and Secure Training Centres (STCs).¹⁰ This is deeply worrying due to the risk of physical harm children who are already vulnerable, and also the high risk of emotional and mental trauma such interventions can cause.

Lord Carlile conducted an independent inquiry into the treatment of children in penal custody. He stated:

“My inquiry has considered various ways that children are treated in penal custody, which I believe would, in any other circumstances, trigger a child protection investigation and could even result in criminal charges... While many of the children held in custody exhibit challenging behaviour and have complex health and social needs, there are over-riding concerns about the forcible strip-searching of young people, long periods of isolation as punishment and the physical restraint of children.”¹¹

We are concerned that, despite the Government and youth justice board’s assertions, in practice, restraint is not being used as a last resort and that there are cultures across some institutions where restraint is used too readily. According to HM Chief Inspector of Prisons, *“injuries sustained during restraint are often the highest single category of child protection referrals in an establishment; but few monitor the injuries that arise from use of force”.*¹²

The National Children’s Bureau (NCB) report for the youth justice board highlighted that physical restraint is used inconsistently across the different settings and that, in YOIs, *“it can be used if behaviour is ‘violent’, ‘recalcitrant’ or ‘disruptive’ (terms open to interpretation and therefore abuse)”.*¹³ It also highlighted that many inquiries have concluded that the Control and Restraint (C&R) technique - based on pain-compliance, pressure on joints and prone restraint - used in YOIs should **not** be used on children. So the question must be asked, why is this technique still being used?

In addition, there is evidence that restraint and the use of pain are being routinely used in STCs as a response to non-compliant behaviour.¹⁴ Two children, Gareth Myatt and Adam Rickwood, have died in STCs as a result of restraint. Gareth Myatt died after being restrained by three adult officers at Rainsbrook STC; the inquest into his death highlighted systemic failure to protect children in the custody and care of the state. Adam Rickwood killed himself shortly after being subjected to restraint by four male officers in Hassockfield STC. The inquest into Adam’s death found that children were regularly being restrained to punish and secure compliance outside the STC rules.

We are concerned that while the use of Physical Control in Care (PCC) in STCs is supposedly designed to not inflict pain or to rely on pain-

compliance for its effectiveness, there is the state sanctioned use of thumb, rib and nose “distraction” techniques which involve inflicting deliberate pain to the child. These techniques have caused injury to children, and their use puts a child at risk of emotional trauma. In being restrained at Hassockfield STC, Adam Rickwood was subject to the “nose” distraction technique. The log book from Hassockfield STC shows the high numbers of nose bleeds suffered as a result of nose distraction and the regular doses of analgesics issued after incidents of restraint.

The use of techniques to inflict pain is in violation of a child’s right under the UNCRC to be free from cruel, inhuman or degrading treatment or punishment. The use of violence and force as control or punishment on some of the most vulnerable children in society is unacceptable. We believe the practice in relation to restraint in some YOIs and STCs is in clear breach of the UNCRC. In some circumstances it will also contravene the European Convention on Human Rights, in particular article three which prohibits ‘torture or inhuman or degrading treatment or punishment’ and states that age and vulnerability are relevant factors.

Changes in Secure Training Centre (STC) rules

In response to the inquest into the death of Adam Rickwood, and supposedly in a bid to clarify the law on the use of restraint as requested by the Coroner, changes were made to the STC rules in June 2007 by a statutory instrument (SI 2007, No 1709). The statutory instrument extends the circumstances in which physical restraint, including painful ‘distraction’ techniques, can be used on children in STCs by allowing it to be used to ensure “good order and discipline”.

Far from providing clarity, this change has allowed for a greater degree of subjectivity and individual interpretation as to when it may be legitimate to restrain a child. It does not, as set out, provide clearer understanding on what nature of behaviour by children and young people would be classified as ‘threatening to the maintenance of good order and discipline’. For example, when does failure to comply with a command (to clean up, attend class, go to bed etc.) threaten ‘good order and discipline’? By extending the circumstances in which restraint may be used we are very concerned that the statutory instrument legitimises the use of restraint for the purposes of non-compliance with an order. This could allow staff to use restraint as a means of punishment and to impose their authority over children.

It is 11 MILLION’s view that the amending statutory instrument poses serious concerns for the rights and wellbeing of children and young people in STCs. Also, it raises more fundamental questions around the suitability of the regime in STCs to meet the needs of vulnerable children and young people who have offended. The amendments legitimise the use of violence against vulnerable children who should be regarded as children first and offenders second. The use of restraint in such circumstances risks violating articles two and three of the European Convention on Human Rights and is in breach of article 37 of the United Nations Convention on the Rights of the Child.

We have previously expressed our concern and objection regarding the use of force in school environments for the purpose of “good order and discipline”. There is a worrying trend in legitimising adult use of force on children in a range of settings.

The United Nations Convention on the Rights of the Child (UNCRC)

11 MILLION believes that the use of restraint in some institutions across the juvenile secure estate risks breaching the following articles of the UNCRC:

- Article 3 The best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.
- Article 6 States Parties shall ensure to the maximum extent possible the survival and development of the child.
- Article 19 States Parties shall take all appropriate measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation...while in the care...of any person who has the care of the child.
- Article 20 States Parties should provide special protection and assistance to children temporarily or permanently deprived of their family environment.
- Article 37 States Parties shall ensure that:
- a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
 - c) 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 account the needs of persons of his or her age.
- Article 39 States Parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of any form of neglect, exploitation or abuse; torture or any other form of inhuman or degrading treatment or punishment...Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.
- Article 40 (1) States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for 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 majority of children in custody have substantial needs, many will have suffered past abuse and have backgrounds of neglect and violence, and many will exhibit challenging behaviour. However, in no way should this be used as a justification for violence and abuse to be used against these children. As well as the potential physical harm, any form of restraint may have adverse psychological consequences, particularly where children have been abused or have a pre-existing mental or developmental disorder. 11 MILLION believes that the UNCRC should be the framework for the management of children and young people in custody. The approach to restraint should comply fully with article 37 of the UNCRC and the following circumstances specified by the UN Committee in its 2007 general comment on children's rights in juvenile justice¹⁵:

“Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment.”

“Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care: disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned.”

This is not the context within which restraint against children is being practised in the juvenile secure estate at present. We urge the Government to ensure that this is the basis within which the operation of restraint should take place across the whole juvenile secure estate. Urgent reform is required to prevent inappropriate force being used against children in the secure estate in breach of international human rights standards including the UNCRC, the European Convention on Human Rights and other standards.

Culture and staff training

Changes are required not only in restraint policy but in the culture of the establishments where children are detained. It is still the case that, in both YOIs and some STCs, *“there is much to be done to facilitate regimes where children are understood and listened to.”*¹⁶

YOIs (run by the prison service) and STCs (run by private operators) have lower staff ratios and are larger units than Local Authority Secure Children's Homes (LASCH). LASCHs set the use of physical interventions in the overall context of behaviour management,

recognising the importance of relationships between staff and children and with a culture of having a range of responses to challenging behaviour. It is critical that restraint is set within this context, encompassing prevention, de-escalation and de-briefing. Compared to the approach used in LASCH, C&R and PCC training, “both concentrate solely on physical restraint. They do not incorporate any training on understanding challenging behaviour or on defusion or diversion techniques. This does not support an approach which ostensibly sees physical restraint as the last resort in a range of strategies to manage behaviour.”¹⁷

YOIs and STCs are dealing with often very damaged children who may exhibit challenging behaviour, and these establishments should employ highly qualified staff who are trained in dealing effectively with this behaviour. We support the recommendations of the 2006 United Nations world report on violence against children that staff in care and justice systems should be “carefully selected, undergo criminal record checks, receive appropriate training and necessary supervision, be fully qualified and receive adequate wages and that staff should be trained in child rights and non-violent disciplinary measures. Levels of staffing should ensure effective care and oversight”.¹⁸ Staff in YOIs and STCs need to receive increased levels of training on child care and working with troubled children, including the development of effective strategies to prevent and de-escalate violence. In addition, all staff should receive regular child protection training.

Monitoring

There should be co-ordinated national monitoring and evaluation of all incidents of restraint in all juvenile secure settings, including recording ethnicity. Given the over-representation of black children at all stages of the youth justice system, along with evidence of racism and direct or indirect discrimination in policing and the youth justice system,¹⁹ 11 MILLION is concerned that restraint may be being used disproportionately against ethnic minority children. In addition, any injuries during restraint should be recorded, as well as the impact from the child’s perspective. This information should be collated and analysed centrally and the findings widely disseminated. Furthermore, incidents of restraining females should be closely monitored, as the number of incidents against girls, especially within STCs, is disproportionately high. In 2005/2006 there were a total of 3,036 incidents of restraint in Secure Training Centres, of which 1,245 were on girls. This means that 41% of restraints were on girls, who represent 34% of the STC population. We are concerned that this could reflect the inappropriate and potentially gender-indiscriminate use of restraint in STCs.

Listening to Children

We are concerned that there has been little or no monitoring of children’s feelings, experiences and the impact of restraint upon them. Children in the youth justice system rarely have their voices heard and few use existing complaints procedures. Much more needs to be done to ensure the child’s voice is included and heard within secure establishments. We welcome the Children’s Rights Director’s report on

children's views of restraint,²⁰ in which children highlighted that they are rarely asked about the impact of restraint upon them. It is important that all secure settings gather information from children on the impact of restraint, and learn from it. We also welcome the good practice of institutions involving children in their own risk assessments, with them identifying key triggers that may upset them or catalyse challenging or potentially disruptive behaviour.

Greater transparency and development of evaluated and consistent methods of restraint

We are concerned about the lack of transparency as to the nature and form of authorised restraint techniques across the juvenile secure estate. There needs to be greater transparency about the safety and effectiveness of the techniques used. In particular, the lack of evaluation and evidence base of the different restraint methods used, including the extent of the risks to children, is extremely worrying. There is an urgent need to carry out an evaluation of restraint methods with a view to identifying and adopting the most effective, safe and least damaging approach across all settings with children, in line with international human rights standards for children.

Use of batons

We will be responding to HM Prison Service review on the use of batons and are dismayed by the suggestion that the use of batons on children is even being considered. We strongly oppose this and will be recommending to the review that batons should never be used in the juvenile secure estate. This is in line with the UN rules for the protection of juveniles deprived of their liberty, which state that "*the carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.*"

5 Recommendations



- The use of restraint on children should comply fully with the standards of the UNCRC and be used as a measure of last resort only when the child poses an imminent threat of injury to themselves or others.
- Restraint should never be used as punishment, to maintain order or to impose the authority of staff over children.
- The recently changed rules on the physical restraint of children held in Secure Training Centres are in breach of international human rights standards and should be amended immediately.
- What is urgently needed is a full-scale evaluation of restraint methods with a view to identifying and adopting the most effective, safe and least damaging approach across all settings with children. This should be in line with international human rights standards for children. This approved set of restraint methods should be applied consistently across the secure estate.
- As well as appropriate staffing levels, there should be high levels of quality, child-centred training given to all staff. There needs to be more emphasis on how to diffuse and manage challenging behaviour, as well as actions to prevent such situations from arising in the first place. Also, training ought to include how to develop trusting and respectful relationships between staff and children, paying due attention to children's physical and emotional needs.
- Nationally, there needs to be co-ordinated monitoring of all incidents of restraint in the juvenile secure estate. This must include recording the child's ethnicity, gender and any injuries they suffer as well as the child's views. The psychological impact of restraint should also be closely monitored; this is particularly important as such trauma can be more difficult to detect.
- Children and their parents/carers should be informed of the restraint policy of the establishment: the methods used and the safeguards that are in place.
- Batons, or any other implements or weapons, should never be used on children and should not be issued to staff in the juvenile secure estate.
- Clear statutory thresholds on the use of custody should be put in place in order to ensure that custody is used as a last resort for children.
- In the long term, we would like to see children taken out of prison service and Secure Training Centre custody, and for the small number who may need detention due to public or their own safety, to be

detained for the shortest time possible in Local Authority Secure Children's Homes.

- There needs to be a root and branch review of the whole juvenile justice system addressing the increasing criminalisation of children and the over-use of custody, with a view to bringing the youth justice system into line with the UNCRC and other international human rights standards for children.

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- ¹² HM Chief Inspector of Prisons for England and Wales, op cit, p.41.
- ¹³ National Children's Bureau, undated, Report to the YJB on the use of Physical Intervention within the Juvenile Secure Estate www.yjb.gov.uk, p. viii.
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- ¹⁶ National Children's Bureau, op cit, p.xiii.
- ¹⁷ National Children's Bureau, op cit, p.32.
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