

A Response to Lord Carlile's Inquiry into Children in Custody

Version: Final

July 2006

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Introduction

The Youth Justice Board for England and Wales (YJB) welcomes Lord Carlile's report of his inquiry into the secure estate for children and young people. We believe it is a valuable contribution to the consideration of how best to meet the challenging task of ensuring that children and young people in custody are kept safe and their needs are met.

The role of the YJB is to oversee the youth justice system in England and Wales. We work to help prevent offending and reoffending by children and young people, and to ensure that custody for them is safe, secure, and addresses the causes of their offending behaviour. Wherever possible, we base our work on research and evidence. Specifically, we:

- advise the Home Secretary on the operation of, and standards for, the youth justice system
- monitor the performance of the youth justice system
- within available resources, purchase places for, and place, children and young people remanded or sentenced to custody
- identify and promote effective practice
- make grants to local authorities or other bodies to support the development of effective practice
- commission research and publish information.

The YJB does not directly manage secure establishments but, through our commissioning arrangements, we establish standards and operational specifications to which the secure estate providers operate. Through our monitoring function, alongside the relevant inspectorates, we assess the extent to which key standards and performance indicators are met and take remedial action where we identify difficulties.

The YJB's overall approach to the secure estate is set out in our *Strategy for the Secure Estate for Children and Young People* published in November 2005. The document sets out the principles which should underpin service provision and outlines improvements that have been achieved. These include

- the development of a discrete estate for children and young people, separate from adult provision
- improvements in education, mental health, substance misuse provision and safeguarding arrangements
- the development of child-centred training for staff.

The strategy also sets out the YJB's future development plans, within the resources available to it, building on these improvements.

There are, however, constraints on our capacity to achieve change including the level of demand on the estate, and the resources available.

In relation to behaviour management, the YJB has a broad programme of work seeking improvements in policy and practice. This has included the publication, in February this year, of a new code of practice, *Managing the Behaviour of Children and Young People in the Secure Estate*. The code of practice sets out the key areas that secure estate establishments will be monitored against, including their:

- management arrangements
- systems of rewards and sanctions
- planned approach to managing behaviour
- processes for consulting children and young people
- complaints' procedures
- access to advocacy services
- de-escalating processes
- removal and separation procedures
- system of physical intervention.

At the heart of the code is an emphasis on promoting positive behaviour, and developing good and respectful relationships between staff and children and young people. Lord Carlile's report will be of assistance in informing our programmes of work in this area.

This document sets out our response to the recommendations made in the report that are directed to the YJB. It outlines where there is existing or planned work that addresses the issues identified by Lord Carlile, and those areas where we agree that further work needs to be undertaken. For a limited number of the recommendations, it outlines why we do not fully agree with Lord Carlile's position, or where we believe that further consideration is necessary before a final response can be made.

The YJB is in full agreement with Lord Carlile's starting point that "the rule of law and the protection of human rights should apply to all children equally, regardless of whether they are detained or in the community". We agree that children and young people must retain their civil and human rights in so far as possible within the limits of the loss of freedom. We acknowledge that the YJB and partners, including regulators, need to work together in order to meet international law and standards in relation to the treatment of children. We are in full agreement that there is a duty to set high standards. The detention of children has to be a last resort and, when it is used, there is a particular responsibility to ensure that there are the highest standards of care specifically geared to the needs of children and young people. The YJB is committed to the important outcomes set by the Government's Every Child Matters agenda and the Children Act 2004. It is vital that those outcomes are progressed for all children, including children and young people in custody.

Many children and young people in custody have substantial needs, and their behaviour can sometimes be extremely challenging. They often have chaotic lifestyles and difficult family backgrounds, and have long histories of challenging behaviour. We wholly agree with Lord Carlile's view that "the challenging behaviour by children offers no excuse for abusive policies or bad behaviour by staff if it occurs". However, it does provide the context for why it is operationally necessary for there to be methods available to control behaviour in the secure estate. Unless there is order, it is not possible even to begin to address their needs. If custody is to be used, then there must be methods to ensure that

challenging behaviour inside custody can be addressed, not least to ensure the safety of the child, other children and staff.

The challenge for Government, the YJB, and the providers of custody is to ensure that the most appropriate methods are available, and that they are used in the most appropriate way. The YJB is clear that interventions with young persons should be at the lowest level necessary to ensure order and safety in secure establishments. While Lord Carlile's report does not make this conclusion, some commentators have used Lord Carlile's report to in some way conclude that there are problems unique to secure training centres (STCs) that need to be addressed. This has included reference to statistics provided to Lord Carlile's inquiry which on a superficial level point to higher levels of restraint and other incidents in STCs.

The YJB does not accept that there is something unique to the STC model that is causing specific problems. We are fully aware of the responsibility of ensuring that the contracts for STCs, held with private operators, are carefully monitored. This is a central part of our work. We do not believe that there is evidence that the challenges related to managing behaviour in custody are more acute in STCs than in the other sectors. In relation to the statistics, it needs to be taken into account that the recording requirements can be more onerous in STCs than other sectors. For example, the definition of restraint is more widely drawn for STCs than it is for young offender institutions (YOIs). (As noted in our submission to Lord Carlile's inquiry, we are currently in the process of seeking agreement across the range of providers for more consistent data collection.)

The YJB is committed to ensuring that standards in custody for children and young people are high, that the rights of children and young people are respected, and that custody is constructive in terms of seeking to reduce the likelihood of reoffending on release. There are operational dilemmas in relation to the management of behaviour in custody that need to be acknowledged, and this is a difficult area of policy and practice: but the YJB is clear that significant improvements have been made and further improvements can be made. We welcome Lord Carlile's contribution to this process.

Responses to the recommendations

Resolving conflict and reducing violence

Recommendation 3

There should be consistent standards of care, rules and conditions across all establishments.

We agree that there should be fundamental principles which apply across the whole estate. To this end, we publish national standards and frameworks like *Managing the Behaviour of Children and Young People in the Secure Estate*, *National Standards for Youth Justice Services* and *Key Elements of Effective Practice*. However, we do not and cannot prescribe precise rules because there are different legal, contractual and operational arrangements between the three sectors of the estate, and because individual sectors look after various children who may have diverse needs that require a different approach.

Recommendation 4

Staff should be models of good behaviour to the young people.

We agree that staff should act as positive role models for children and young people, and this principle already underpins contracts and service level agreements with secure accommodation providers.

Recommendation 5

Staff education and training needs to be consistent and of the highest standard, and staff coming into the service should normally be educated to degree standard.

We do place a high priority on staff education and training. We have commissioned, and the Prison Service has designed and implemented, the Juvenile Awareness Staff Programme (JASP) for Prison Service staff, which we are committed to maintaining and developing. Care staff in STCs must undergo an initial training programme prior to commencing work. Both these programmes include training on safeguarding and child protection. Training for staff in secure children's homes is provided by local authorities.

Additionally, the YJB has developed a qualifications framework for staff working in the youth justice field, and some staff working in STCs and secure children's homes have, during 2005/06, undertaken the Effective Practice Unit Award.

We do not agree that it is either necessary or desirable for all staff to be educated to degree standard – selection for this type of work should be on the ability to work with young persons rather than on academic attainment.

We plan to undertake a review, during 2006/07, of how staff working in the secure estate can best engage with the YJB's National Qualifications Framework in order that the achievements to date can be built upon.

Recommendation 6

Staff should be trained in core competencies before they start work with children.

We are working with the Children's Workforce Development Council to identify and agree core competencies for working with children in which staff should be trained, and which are transferable between different care settings.

We agree that staff should receive core training before they start work. Training arrangement in STCs ensure that this happens. In the Prison Service, all new staff

receive basic training before starting work, augmented by JASP training, provided as soon as possible by the establishment to which they are allocated. Staff in secure children's homes should receive induction and training from their employing authority and, in 2005/06, have also had the opportunity to undertake the YJB's Effective Practice Unit Award.

Recommendation 7

All staff working with children in custody should receive child protection training.

All custodial staff receive child protection training. Staff working in STCs and secure children's homes receive this training during their induction. In the Prison Service, newly allocated staff receive JASP training (which includes child protection training) as soon as possible after their placement in their establishment.

Recommendation 8

More sophisticated and intensive conflict resolution training is needed so that best practices are embedded in daily practice.

The YJB is currently developing a strategy to promote restorative justice in the youth justice system, and in particular in the secure estate. A restorative justice pilot is currently running in Ashfield YOI, and similar exercises are planned in other sectors of the estate. These will provide opportunities for identifying and sharing best practice across the estate.

Recommendation 9

Staff ratios to children should be consistent across the secure estate.

We do not agree with this recommendation. We believe it is necessary to have higher staff ratios for more needy children (e.g. younger children, or children identified as having particular needs). We are aiming to develop a secure estate where staff ratios properly reflect the different needs and risks of children and young people.

Recommendation 10

Children must be encouraged to go outside every day and participate in outdoor exercise for at least one hour, five times a week.

We agree that exercise is important and youngsters do have the opportunity to participate in sport and PE, though not always outdoors.

The *National Standards for Youth Justice Services* already provide that each young person must have the opportunity for fresh air for at least one hour per day, although the physical environment and other factors may make this difficult in some units. We will use our accommodation review process to progress this ambition, as opportunities present themselves for us to do so.

Recommendation 11

There must be structures to engage and empower children in decision making.

The *National Standards for Youth Justice Services* require that children and young people should be centrally involved with sentence planning processes, and our advocacy/independent persons services are required to assist and empower children in those processes if they require it.

In relation to regimes more generally, our behaviour management code of practice requires consultation mechanisms to be in place, and again, our advocacy/independent persons services are required to promote and assist consultation processes, and empower children and young people in participating effectively.

We have commissioned Her Majesty's Inspector of Prisons (HMIP) to conduct regular surveys of young people's perceptions of care in custody. This information is augmented by Prison Service surveys of people held in custody, relating to perceptions of the quality of life. We use this information to enable young people's perspectives to inform our development and improvement plans.

Recommendation 12

Conflict resolution should be based on restorative principles.

We believe we have addressed this point in our response to Recommendation 8.

Recommendation 13

A staff peer review system should be introduced mirroring that in place in mental health institutions, so that attitudes and actions are questioned daily.

We expect custody providers, through our contractual arrangements, to have in place proper mechanisms for supporting, supervising and appraising staff. It is for custody providers to judge whether they wish to implement supplementary measures, such as peer review systems, and we will support (and have supported) providers who wish to develop new approaches.

Recommendation 14

Monitoring of the use of punishments of children from minority ethnic groups needs to be improved.

We agree that we need to improve ethnic monitoring arrangements for a wide range of issues, and we have set up a task group involving the Department for Education and Skills (DfES), Commission for Social Care Inspection (CSCI) and others to take this forward.

Recommendation 15

All children should have easy and confidential access to information, advice and support from appropriate outside agencies.

The YJB lets contracts with independent persons and advocacy services in young offender institutions (YOIs) and STCs. Secure children's homes have visiting independent persons services contracted by the relevant local authority. Contracts and service level agreements require that young persons are made aware of these and other services, such as that provided by the Prisons and Probation Ombudsman and the Independent Monitoring Board. STC contracts additionally require that young persons are made aware of, and have free telephone access to, other voluntary sector organisations such as Childline and the Samaritans.

Recommendation 16

Staff should not be in uniform.

We do not wholly agree with this recommendation. We do not require establishments to use uniforms, but accept that in some settings use of uniforms may be desirable. For example, it may be important to be able to distinguish between staff, young people and visitors quickly and easily particularly in the event of an emergency. We leave this judgement to the establishments concerned, but where they do want to use uniforms, we encourage the use of informal uniforms.

Restraint

Recommendation 17

The policy that restraint should never be used as a punishment must be made clear.

Existing standards, service level agreements and contracts already make this clear, and the matter has recently been reinforced through our behaviour management code of practice.

Recommendation 18

Restraint should not be used primarily to secure compliance.

Our behaviour management code of practice makes it clear that restraint should only be undertaken on the basis of a risk assessment that harm is likely to occur if a physical intervention is not employed.

Recommendation 19

Restraint should never be premeditated as it then becomes a punishment, not an intervention to secure safety.

We do not accept this recommendation. We do not accept that there is a logical link between premeditation and punishment, and indeed, since a restraint should only be employed on the basis of a risk assessment (albeit sometimes in an emergency), there should generally be some degree of forethought. Moreover, there may be occasions when restrictive physical interventions do need to be very carefully planned. For example, a hostage situation may require physical intervention and would certainly require careful planning.

Recommendation 20

One certified physical intervention technique that is safe for children should be developed as a matter of urgency, and should be used across the secure estate.

We do not accept this recommendation. We have given this proposal serious consideration over the last two years, and we do not believe that it is feasible. This is because the age, size, and strength of the children concerned are so widely divergent, as well as staff ratios and the physical environment that apply in the different sectors of the estate. The approach we take instead is to establish a standard set of principles, which we have done through our behaviour management code of practice and we are working with all providers to move towards compliance.

Recommendation 21

The YJB should oversee the use of the disciplinary system so that it is rigorously applied when an allegation is made against a member of staff.

We do not accept this recommendation. We require providers to have rigorous disciplinary systems, but it is for them as the employers to manage those systems.

Strip searching

Recommendation 35

Policy, practice and procedure should be the same in all the establishments holding children.

We consider that there are fundamental principles of good practice that should underpin full searching, but the way these principles are implemented may be different in various establishments. We will undertake a review of this area of practice.

Recommendation 36

Strip searching is not necessary for good order and safety.

It is absolutely necessary to ensure that dangerous/illegal items and substances are not brought into secure establishments, for the safety and security of all children and staff in the establishment concerned. We currently believe that in some settings this can only be achieved by full searches, but we will reconsider this view in the light of the review mentioned in our response to Recommendation 35.

Recommendation 37

Searches should be conducted based on the good practice the Inquiry found in local authority children's homes.

We believe there are examples of good practice found in all sectors. We would wish to instil and promote the best practice across the estate, following the review mentioned in our response to Recommendation 35.

Recommendation 38

Searches could be reduced by at least 50% by applying a more evidence-based approach, without risk to security or safety being significantly increased.

We are not aware of the evidence to support this claim. We need to await the review mentioned in our response to Recommendation 35 before being in a position to estimate whether a reduction may be possible, and if so to what extent.

Segregation

Recommendation 39

Policy should be developed for 'time out' practices so it is used, monitored and recorded consistently.

Our expectations in relation to 'time out' practices are set out in our behaviour management code of practice. We are working on improving definitions, through the process mentioned in our response to Recommendation 14, so that we will be able to achieve more consistent monitoring.

Recommendation 40

Prison segregation units should not be used for children.

We believe that it is sometimes necessary and desirable to separate children/young people from their normal location, according to the principles set out in our behaviour management code of practice.

We are working with the Prison Service to review how these arrangements should apply within the Prison Service, and we will use our capital development programme to enable improved separation arrangements to be achieved.