



House of Lords
House of Commons
Joint Committee on
Human Rights

The Use of Restraint in Secure Training Centres

Eleventh Report of Session 2007–08



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*Report, together with formal minutes, and oral
and written evidence*

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Joint Committee on Human Rights

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Summary

Human rights apply equally to people in detention. Detained children and young people are especially vulnerable. British law and practice call into question the Government's commitment to recognising the dignity and worth of children in detention. The Committee has previously drawn attention to physical assault on and restraint of children in detention which it saw as unacceptable contraventions of the UN Convention on the Rights of the Child (paragraphs 1-4).

The Secure Training Centre (Amendment) Rules, which amended the Secure Training Centre Rules 1998, came into force in July 2007, without parliamentary debate. They amend the existing Rules to permit Secure Training Centres (STCs) to use force against detained children and young people to "ensure good order and discipline". The Amendment Rules were criticised for widening the scope for restraint in STCs. The Government promised a review of restraint in juvenile settings. In a judicial review of the Amendment Rules, the High Court held that they represented a "significant change in policy". In this Report the Committee considers their compatibility with the UK's human rights obligations (paragraphs 5-18).

Restraint allowed in STCs is known as Physical Control in Care (PCC) and comprises a range of restraint holds and so-called "distraction techniques". The UN Committee on the Rights of the Child has stated that the deliberate infliction of pain should not be used as a form of control. The Minister told the Committee that PCC was "designed to avoid, as far as possible, the use of techniques that involve pain", stating that "the Government does not sanction violence against children". The Committee considers that this is the effect of current UK law and that violence against children should be avoided unless absolutely necessary. Statistics suggest that restraint is used on average on ten occasions per child per year. The issue of restraint has arisen in inquests into the deaths of two young people detained in STCs (paragraphs 19-38).

The Minister told us that the Amendment Rules were brought in to clarify the existing legal position and to respond to the comments of the coroner who conducted the inquest into Adam Rickwood's death. In the Committee's view, the Amendment Rules have created more confusion and widened the scope for use of force in an unacceptable manner. The Committee recommends new Amendment Rules, following consultation with interested parties and medical advice, to make clear that physical restraint is not permissible for the purposes of good order and discipline. It also recommends careful monitoring of the effect of the Amendment Rules and that the Government regularly reports to Parliament on the number of restraint incidents (paragraphs 39-74).

The Committee welcomes the creation of the Youth Justice Unit, the current review of restraint and the re-establishment of the Medical Review Panel. It welcomes the Government's suspension of two restraint techniques in December 2007 and recommends abolition of all distraction techniques without delay. It suggests a series of specific measures to ensure compliance by STCs with human rights standards, including amendments to their contracts, monitoring of their local operating instructions, staff training and provision of information on restraint to detained children and their families. It also recommends that the PCC training manual, which should be published in full and disseminated to all staff who

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use restraint, be regularly revised to ensure that staff are absolutely clear about when restraint is permitted (paragraphs 75-118).

1 Introduction

1. When the state takes away the liberty of an individual and places him or her in custody, it assumes full responsibility for protecting that person's human rights. Fundamental amongst these are the right to life, the right not to be subjected to torture, inhuman or degrading treatment or punishment, and the right to bodily integrity.¹ These rights, which apply equally to people in detention, now form part of our law under the Human Rights Act 1998 ("HRA"). The treatment of detained children and young people raises particular concerns, given their heightened vulnerability. The United Nations Convention on the Rights of the Child 1989 ("UNCRC"), ratified by the UK in 1991, emphasizes a recognition of the dignity and worth of children. In the context of detained children and young people, this principle is vital to the rehabilitation of the child and to his or her ability to be an effective citizen when released. However, law and practice in the UK relating to children and young people in detention calls into question the Government's commitment to that principle.

2. We, and our predecessors, have had a longstanding interest in ensuring that the human rights of children in detention are protected. In their 2004 report on deaths in custody, our predecessors stated:

Human rights standards and the principle of proportionality require that any form of physical restraint should be a last resort. Staff should therefore be equipped with a range of skills to deal with and de-escalate potentially violent situations, as well as a range of restraint techniques that will allow for use of the minimum level of force possible. Restraint in detention should be a rare event, and should never be used as a matter of routine.²

3. Our predecessors' Report on the UNCRC considered the position of children in all forms of detention in the UK, and stated:

The level of physical assault and the degree of physical restraint experienced by children in detention in our view still represent unacceptable contraventions of [the] UNCRC.³

4. The principal human rights standards with which we are concerned in this Report – particularly in relation to the UNCRC – are considered in detail in the Annex to this Report.

Our inquiry

5. On 8 August 2004, 14 year-old Adam Rickwood was found dead in his room in Hassockfield Secure Training Centre, having been restrained with the use of a pain technique earlier that day for refusing to go to his room. He had hanged himself. Adam was the youngest child ever to die in penal custody in England and Wales.⁴ The coroner

¹ Articles 2, 3 and 8 ECHR.

² Third Report of Session 2004-05, *Deaths in Custody*, HL Paper 15-I, HC 137-I, para. 234.

³ Tenth Report of Session 2002-03, *The UN Convention on the Rights of the Child*, HL Paper 117, HC 81, para. 52.

⁴ See paras 33-36 of this Report for further details.

who conducted the inquest into his death made a number of recommendations, including that an urgent review of the rules on the use of restraint be undertaken to clarify the relationship between the Criminal Justice and Public Order Act 1994 and the Secure Training Centre Rules 1998. He stated:

It must be seen as essential that there must be no ambiguity in anyone's mind, young person, staff, management or those in the YJB [Youth Justice Board] or indeed Government as to when the use of restraint or force to maintain good order and discipline or for compliance reasons is authorised.⁵

6. The Secure Training Centre (Amendment) Rules 2007⁶ (“the Amendment Rules”) were laid before Parliament on 13 June 2007. The Amendment Rules amend the existing Rules to permit secure training centres⁷ – privately run prisons which detain approximately 300 children and young people – to remove a child from association or restrain him or her to “ensure good order and discipline”.⁸ This change immediately attracted criticism from expert NGOs (such as Inquest, the NSPCC and the Howard League for Penal Reform), who claimed that this significantly increased the range of circumstances in which restraint – a polite term for force, comprising holds and so-called “distraction” techniques (which involve inflicting pain to thumb, ribs or nose) – could be used in Secure Training Centres (“STCs”). Indeed, the former head of policy for the juvenile secure estate at the Youth Justice Board (“YJB”) described the proposed changes as “utterly deplorable”, warning that the Amended Rules would lead to an increase in the use of restraint as “staff will no longer need to worry if their restraints can be justified”.⁹ The Rules came into force on 6 July 2007, without parliamentary debate.¹⁰

7. On 25 June 2007, we wrote to the Minister expressing our “surprise and disappointment at the Government’s decision to extend the range of circumstances in which force can be used in secure training centres”. We sought an explanation of how the Amendment Rules are compatible with the European Convention on Human Rights (“ECHR”) and the UNCRC, and specific information on a number of detailed issues.¹¹

8. The Minister replied on 10 July 2007, stating:

We are quite confident that the 2007 Rules accord with both the ECHR and the UN Convention on the Rights of the Child ... As with most if not all rights, there is an important balance to be struck between competing rights. It is essential to have proper regard to the rights of other trainees and of members of staff, as well as of the young person being restrained, and to weigh the risks attaching to failure to restrain in situations where restraint is necessary. A secure facility cannot be run safely if aggressive and dangerous behaviour is allowed to go unchecked, or if good order is compromised to the extent that staff lose effective control. The behaviour of young

⁵ Letter from Andrew Tweddle, Ev 28, para. 10.

⁶ 2007/1709.

⁷ See para. 19 of this Report for further details.

⁸ Rules 36 and 38, as amended.

⁹ The Guardian, *Former youth justice chief attacks rule change on restraint*, 22 June 2007.

¹⁰ Since coming into force, the Rules have been debated in both Houses of Parliament (HL Deb, 18 July 2007, Col. 281 et seq. and HC Deb, Fourth Delegated Legislation Committee, 28 November 2007).

¹¹ Ev 14-15.

people in custody is frequently challenging and sometimes dangerous. Physical restraint must be available – in the last resort – so that everyone in the secure facility can be kept as safe as possible.¹²

9. We do not underestimate the challenging task that STC staff face. Difficult situations may often arise in STCs and staff need to have the means at their disposal to ensure that they can keep detainees safe, as well as to protect themselves. However, in the light of our previously expressed views on the extremely vulnerable position of detained children and young people, we had serious concerns about whether the Amendment Rules would lead to more frequent resort to force and fail to provide adequate protection for the rights of children and young people within STCs. We therefore decided to explore this issue further.

10. The Committee issued a call for evidence on 26 July 2007, seeking evidence “on the compatibility of the Rules with international human rights standards and any observations regarding the use of force against children in secure training centres”. We are grateful for the written evidence we received, including from the Ministry of Justice, the YJB, Sally Keeble MP, a number of organisations concerned with protecting children and young people in detention, the Children’s Commissioner and a STC operator. On 10 October 2007, the Committee took oral evidence from David Hanson MP, Minister of State at the Ministry of Justice, and Ellie Roy, Chief Executive of the YJB. Following this evidence session, we entered into further correspondence with the Minister.¹³

Developments

11. During the period of our inquiry, there have been a number of notable and relevant developments in this area.

12. On 12 July 2007, a joint review of restraint issues in juvenile settings was announced by the Ministry of Justice and the Department for Children, Schools and Families. The Review is due to report to Ministers by 4 April 2008.¹⁴ The broad terms of reference of the review are to:

... encompass policy and practice on the use of restraint across a range of juvenile secure settings including Secure Training Centres (STC), Secure Children’s Homes (SCH) and Young Offender Institutions.¹⁵

13. On 18 July 2007, Lord Carlile of Berriew QC, who chaired the Howard League for Penal Reform’s inquiry into restraint,¹⁶ initiated a debate in the House of Lords seeking the annulment of the Rules. Lord Carlile feared that the effect of the Amendment Rules was:

¹² Ev 15.

¹³ Ev 20-28.

¹⁴ HC Deb, 22 October 2007, 127W. In a written ministerial statement to the House of Commons on 8 October 2007, the Government announced that Andrew Williamson CBE and Peter Smallridge CBE had been appointed to chair the review. The statement said “the Chairs will be considering whether any further issues should be brought within the broad terms of reference of the review and will decide soon the process for calling the evidence and for consulting with interested parties.”

¹⁵ Terms of Reference, 26 July 2007.

¹⁶ Howard League for Penal Reform, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes*, January 2006.

... to make the use of physical restraint one of the items on the menu of first choices available in any secure training centre, whenever there is any sign of trouble.¹⁷

14. During the debate, the Government defended the Amendment Rules, claiming that they had been introduced because of a lack of clarity in the legal regime, as identified by the coroner who presided over the inquest into Adam Rickwood's death.¹⁸ Following the Government's assurance that an inquiry would be set up, the motion to annul the Rules was withdrawn.¹⁹ On 28 November 2007, the Rules were debated in a Delegated Legislation Committee in the House of Commons.²⁰

15. On 8 February 2008, the High Court gave judgment in a judicial review challenge to the Amendment Rules holding that the failure to consult the Children's Commissioner was *Wednesbury* unreasonable and the failure to carry out a race equality impact assessment was in breach of the Secretary of State's duty. On the Claimant's arguments that the Rules were in breach of human rights, the Court focussed on two questions: whether the vagueness of the phrase "good order and discipline" renders the Rules too uncertain to provide the required protection against arbitrariness; and whether the Rules, looked at in the abstract, legitimise treatment which would be bound to violate Articles 3 or 8 ECHR. The Court held that the Rules are neither legally uncertain nor do they legitimise treatment which is in breach of Articles 3 or 8, but stated:²¹

Whether conduct and/or treatment complained of in a future case is contrary to Articles 3 and/or 8 will depend on all the circumstances.²²

Although deciding that the Amendment Rules were "a significant change of policy",²³ the Court decided not to quash the Amendment Rules as the Claimant himself was no longer at risk of being detained in a STC and the issue was receiving consideration "in good faith within a reasonable timescale".²⁴

16. On 2 to 6 December 2007, the Council of Europe Committee for the Prevention of Torture visited the UK to discuss, amongst other topics, the use of restraint on children and young people in detention. The Committee met with the Youth Justice Board and Ministry of Justice.²⁵

17. Later that month, on 18 December 2007, the Minister confirmed that two restraint techniques: the "double basket hold"²⁶ and the "nose distraction technique" (the latter of which was used on Adam Rickwood on the day of his death), had been suspended on the basis of medical advice.²⁷ The same day, the YJB wrote to all establishments using such

¹⁷ HL Deb, 18 July 2007, Col. 282.

¹⁸ Ibid, Col. 303.

¹⁹ Ibid, Col. 311.

²⁰ HC Deb, Fourth Delegated Legislation Committee, 28 November 2007.

²¹ *R (on the application of AC) v Secretary of State for Justice* [2008] EWHC 171 (Admin).

²² Para. 45.

²³ Para. 35.

²⁴ Para. 51.

²⁵ CPT Press Release, 12 December 2007.

²⁶ A description of this restraint hold is not in the public domain, see Chapter 4 of this Report.

²⁷ Ev 28.

techniques, noting that the Physical Control in Care (“PCC”) medical panel “had identified some potential risks with the double basket hold and had also queried the need to retain the nose distraction technique” and asking STCs to ensure that the two techniques not be used until further notice.²⁸

Structure

18. This Report considers the compatibility of the STC Rules 1998 as amended by the STC (Amendment) Rules 2007 with the UK’s human rights obligations. We consider this against the backdrop of broader concerns about the use of restraint within STCs and the adequacy of the existing safeguards. Chapter two sets out the background to STCs and the use of restraint, known as PCC. Chapter three considers the STC (Amendment) Rules in detail. We look at their purpose and effect, including whether they change or merely clarify the law, and in particular whether they meet the concerns of the coroner who conducted the inquest into Adam Rickwood’s death. Chapter four considers the use of restraint more generally and makes recommendations with a view to ensuring that the rights of children and young people in detention are properly protected.

²⁸ Letter from Ellie Roy, 18 December 2007.

2 Secure Training Centres and the use of restraint

Secure Training Centres

19. Secure Training Centres (STCs) accommodate young offenders aged 12 to 17 inclusive who are serving certain custodial sentences, and some young people who have been remanded into the care of a local authority with a requirement that they be kept in secure conditions. There are no STCs in Scotland. The centres were originally conceived for children and young people who were too young or vulnerable to be in young offender institutions run by the Prison Service. Four centres are in operation (Medway, Oakhill, Hassockfield and Rainsbrook). All are privately run. Rebound, the company which manages Medway and Rainsbrook Secure Training Centres, provided evidence to our inquiry. In oral evidence, the Chief Executive of the YJB described STCs as “reasonably okay” but “very claustrophobic”.²⁹

20. We have been concerned about the regime in STCs since early 2006 when we asked the Minister to supply us with quarterly information on the number of occasions restraint was used and the number of occasions on which the staffing levels fell below the YJB minimum safe level.

21. The Ministry of Justice is responsible for the legislation and Rules under which STCs operate. It also oversees the YJB, a non-Departmental Public Body, which was set up in 1998, and is responsible for:

... commissioning secure accommodation for children and young people sentenced or remanded by the courts. The YJB maintains oversight of contracts and service level agreements (SLAs) for secure accommodation services. The YJB’s only executive function is to operate the placement service for children and young people sentenced or remanded by the courts developed following the establishment of the YJB. Statutory responsibility for approving PCC techniques rests with the Secretary of State, not the YJB.³⁰

22. A new Chair of the YJB, Frances Done, was appointed in January 2008, a year after the former Chair, Professor Rod Morgan, left.

Physical Control in Care

23. The type of restraint which may be used in STCs is known as Physical Control in Care. PCC restraint comprises holds and three “distraction” techniques; the latter involves inflicting pain to thumb, ribs or nose. The nose distraction technique, which was suspended by the Ministry of Justice in December 2007,³¹ had previously been withdrawn in STCs managed by Rebound following an internal evaluation of its use and

²⁹ Q 30.

³⁰ Ev 34, para. 1.14.

³¹ Ev 28.

effectiveness.³² In its evidence to us, the YJB distinguished between holds, which it described as “non-pain compliant methods” and other methods (i.e. distraction techniques), which “rely on techniques which create pain”.³³

24. According to the Minister, holds:

... are graded according to the level of resistance the trainee is presenting. Level 1 holds are made by a single custody officer; level 2 by two officers; and level 3 by three officers. The purpose of these holds is to safeguard both the young person being restrained and anyone he or she might injure – notably other young people and members of staff at the centre. In some circumstances, however, it is not possible to apply a hold immediately because, for example, the trainee has seized another young person and refuses to release him or her. Before a hold can be applied, it is first necessary to disengage the trainee and for this three distraction techniques are available.³⁴

25. The YJB noted that distraction techniques:

... are designed for use in dangerous or violent situations where a person is at serious risk of injury. Distraction techniques inflict a momentary burst of pain to the nose, rib or thumb to distract a young person who presents a danger to him/herself or others.³⁵

26. In oral evidence, the YJB provided us with an example of the use of restraint in practice:

In one of the STCs earlier this year we had an incident where four young people, four boys, linked arms. They were aged about 16 or 17, I think. They refused to go to bed at bedtime. They were not posing any risk to anybody else, they were not threatening to self-harm, but, because they had done that and they just would not move and the staff could not get them to move, they could not induce them to move, they could not incentivise them to move, they were posing a risk to the establishment moving into night state, when all the children are in bed and where they need to have suicide watches and all that sort of stuff. They needed to move forward, so they needed to intervene in that situation because the staff in that situation were required to undertake a risk assessment as to whether they should intervene to bring the situation under control or whether, if they let it run, there would be a risk to other young people. In that situation, other young people were getting quite upset, there was a lot of tension starting to build, so they made a judgment that they needed to intervene to bring the situation under control and that is the type of situation where they would intervene using this. And it is to fulfil their duty of good order and discipline, because the question otherwise is: What can they do in that type of situation?³⁶

³² Ev 52, para. 55.

³³ Ev 34, para. 1.11-1.12.

³⁴ Ev 15.

³⁵ Ev 41, para. 1.58.

³⁶ Q 22.

Human rights compatibility of PCC

27. We asked the Minister to explain how the use of painful distraction techniques was compatible with the UK's human rights obligations to ensure that restraint does "not involve the deliberate infliction of pain as a form of control", as required by General Comment 8 of the UN Committee on the Rights of the Child, the monitoring body for the UNCRC.³⁷ In reply, he stated:

PCC is designed to avoid, as far as possible, the use of techniques that involve pain. Distraction techniques are for use in situations where the risk involved in not using such a technique outweighs the undesirability of using it. The Government notes the opinion of the UN Committee [...] However, the Government's obligations under the Convention are determined solely by the requirements of the Convention.³⁸

28. The Minister distinguished the use of force or restraint to prevent harm from the application of violence, which he described as "the unreasonable, unjustified and unlawful use of force". He noted that the Government has an obligation "to provide for restraint to be used, where the consequence of not using it would be to put people at risk", concluding that "the Government does not sanction violence against children".³⁹ We note that in a guide for practitioners, the Scottish Institute for Residential Child Care made it clear that, "pain compliance is not an acceptable practice in child care".⁴⁰

29. The state has a duty to ensure that detained young people and STC staff are protected from abuse or violence. It is therefore incumbent on the state to take positive steps to ensure that detainees and staff are not injured by other detainees, and conversely that detainees are not injured by staff.

30. We are dissatisfied by the Minister's explanation of how current policy and practice comply with human right standards. The Minister appears to be suggesting, first of all, that the state is not required to comply with General Comments of the UN Committee on the Rights of the Child, and simply with the Convention itself. While this may be strictly correct as a matter of international legal obligation, we are very disappointed by the Government's apparent lack of respect for the interpretations of the UNCRC by the UN Committee in its General Comments.⁴¹ We regard these comments as being fundamental to an understanding of the State's obligations under the UNCRC.

31. The Minister also appears to distinguish between the use of force or restraint and the application of violence. Such a distinction does not feature in human rights law. The key question is whether the use of restraint can be justified in the circumstances. Whilst the Minister robustly states that the Government does not sanction violence against children, this is exactly what current legislation permits, albeit using the

³⁷ Ev 21.

³⁸ Ev 24.

³⁹ Ev 24.

⁴⁰ *Holding Safely: A Guide for Residential Child Care Practitioners and Managers about Physically Restraining Children and Young People*, Scottish Institute for Residential Child Care, 2005, p. 77.

⁴¹ Thomas Buergenthal, a Judge at the International Court of Justice, has described comparable General Comments of the Human Rights Committee as "a distinct juridical instrument, enabling the Committee to announce its interpretations of different provisions." Buergenthal, T., *The Human Rights Committee* in Philip Alston (ed.), *The United Nations and Human Rights* (2000), p. 711.

terminology of “force” rather than violence. We start from the premise that violence against children should be avoided unless absolutely necessary and that very weighty justifications are required to demonstrate the need for force in individual cases.

PCC in practice

32. As of April 2007, there were 301 YJB commissioned places in STCs.⁴² Restraint was used on more than 3,000 occasions in STCs in 2006 and on 1,249 occasions in the first half of 2007.⁴³ **On average therefore, restraint is used on ten occasions per child per year.** It should be noted that distraction techniques are used less frequently – on 30 occasions in the first half of 2007.⁴⁴

33. The issue of the use of restraint in STCs has arisen in the inquests into the deaths of two young people detained in STCs. Gareth Myatt, aged 15, died in Rainsbrook STC in April 2004, three days into a 12 month Detention and Training Order. Gareth died having been restrained in a “seated double embrace” by three officers. Speaking in the House of Commons on 12 July 2007, Sally Keeble MP said of Gareth’s death:

I want to go through some of what happened to Gareth, so that the full horror is on the record. ... Gareth was the last person to use the unit’s sandwich toaster on the Sunday evening and took exception when he was asked to clean it up. “You clear it up,” he told staff. He was asked to go to his room, and the CCTV footage shows him calmly waiting to go to his room, where he was locked in. Shortly afterwards, he was visited by two members of staff—a man and a woman—to discuss his behaviour. He told them to get out of the room because they had no right to be there. He was then told that, because he was not calming down, the staff needed to take some stuff out of his room, and they began doing just that. They took out a magazine, then some papers and pencils. The staff said, “You’re not doing what we asked you, so I don’t see why you should have these.” They then took another piece of paper that had Gareth’s mother’s new mobile phone number on it, and he shouted at them... “Don’t take my mum’s phone number.”

...

That was when the struggle started, and it was said that Gareth—a 6 ½ stone boy—clenched his fist and swung it at the man. The officers and Gareth ended up lying on his bed, with one member of staff holding his legs and another holding his upper body. A third officer, also a man, came into the room, and Gareth was placed in an approved hold: a seated double embrace, with two members of staff holding his upper body, his torso pushed forward and one officer holding his head.

Gareth then said that he could not breathe, so the officer told him, “If you’re shouting, you can breathe.” He then said that he was going to defecate, and was told, “You will have to then,” and he actually did so. Those were his last words. Finally, while still restrained, Gareth was sick. When he was released, he was unconscious

⁴² Ev 35, para. 1.19.

⁴³ HC Deb, 12 July 2007, Col 1718; HL Deb 18 July 2007, Col. 283; and HC Deb, Fourth Delegated Legislation Committee, 28 November 2007.

⁴⁴ HC Deb, Fourth Delegated Legislation Committee, 28 November 2007.

and all attempts at resuscitation failed. One member of staff concluded, “I should never have PCC’ed; he was half my size. It was rather like having run over a cat and then thinking...if I hadn’t gone down that street, it wouldn’t have happened.”⁴⁵

34. This restraint hold had been approved by the Home Office and YJB, and was withdrawn from use following Gareth’s death. Rainsbrook STC is run by Rebound, which provided evidence to the Committee.⁴⁶

35. Adam Rickwood died in Hassockfield STC in August 2004. Several hours before his death, he was restrained using the “nose distraction” technique. After his death, a note was found in Adam’s room, in which he described what had happened. He said:

When I calmed down I asked them why they hit me in the nose and jumped on me. They said it was because I wouldn’t go in my room so I said what gives them the right to hit a 14-year-old child in the nose and they said it was restraint.⁴⁷

36. Reporting to Lancashire’s Safeguarding Children Board on the circumstances surrounding Adam Rickwood’s death, the Serious Case Review Panel was:

... concerned about the use of the “*nose distraction*” technique, particularly within a system which purports not to rely on pain compliance, but also because it may well involve a breach of Article 3 of the European Convention on Human Rights.⁴⁸

37. The Prison Service Training Manual on PCC notes the potential dangers associated with the use of restraint:

A number of adverse effects are possible following the application of restraints. These include being unable to breathe, feeling sick or vomiting, developing swelling to the face and neck and development of petechiae (small blood-spots associated with asphyxiation) to the head, neck and chest.

...

A degree of positional asphyxia can result from any restraint position in which there is restriction of the neck, chest wall or diaphragm, particularly in those where the head is forced downward towards the knees. Restraints where the subject is seated require particular caution...⁴⁹

38. The YJB has produced a 12 page advisory Code of Practice entitled *Managing the Behaviour of Children and Young People in the Secure Estate*, part of which deals with restrictive physical intervention.⁵⁰ The YJB considers that the Code is consistent with the

⁴⁵ HC Deb, 12 July 2007, Col. 1714-1715.

⁴⁶ Ev 46-53.

⁴⁷ Inquest’s briefing on the Secure Training Centre (Amendment) Rules 2007.

⁴⁸ Report to Lancashire Safeguarding Children Board, *Report of the Serious Case Review Panel upon the Circumstances Surrounding the Death of AR at Hassockfield Secure Training Centre on 9th August 2004* (Part II), 3 September 2007, para. 15.1.

⁴⁹ *Physical Control in Care Training Manual*, December 2005, pp. 32-33.

⁵⁰ Youth Justice Board, 2006.

UNCRC and the HRA.⁵¹ We consider the PCC Manual and the Code more fully in Chapter 4 of this Report.

⁵¹ Ev 36, para. 1.24.

3 Secure Training Centre (Amendment) Rules

Introduction

39. Section 9 of the Criminal Justice and Public Order Act 1994 sets out the powers and duties of custody officers employed at STCs. Section 9(3) describes custody officers' powers in relation to those detained at STCs, and in particular, the power to use reasonable force where necessary to ensure good order and discipline, as follows:

(3) A custody officer performing custodial duties at a contracted out secure training centre shall have the following duties as respects persons detained in the secure training centre, namely—

- (a) to prevent their escape from lawful custody;
- (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
- (c) to ensure good order and discipline on their part; and
- (d) to attend to their well-being.

(4) The powers conferred by subsection (1) above, and the powers arising by virtue of subsection (3) above, shall include power to use reasonable force where necessary.

40. The Secure Training Centre Rules 1998 establish the framework of rules under which STCs must operate. Rules 36 and 38 deal with removal from association and physical restraint respectively. Rule 37 deals with the use of force. Prior to the Amendment Rules, STCs could use physical restraint only to prevent specified risks, that is, to prevent harm to self, others, property, risk of escape, or inciting another to harm himself or others, or damage property. The Rules, as originally in force, did not make any mention of “good order and discipline” as a criterion for the use of restraint. During the oral evidence, Baroness Stern, a member of our Committee, suggested that omitting reference to “good order and discipline” from the original STC Rules may have been deliberate rather than an oversight:

Presumably when the Secure Training Centre Rules were written, somebody thought “This is for children, so we want to have a regime that is more appropriate to children, and so it would not occur to us to allow violence to be used for good order and discipline”.⁵²

41. We asked the Minister whether “good order and discipline” had been specifically omitted from the criteria for the use of force when the 1998 Rules were drawn up. He said “I am afraid that our research into this question has not revealed any papers that shed light on the matter.”⁵³

⁵² Q 16.

⁵³ Ev 19.

42. We have not been able to establish conclusively why the phrase “good order and discipline” was not included in the original STC Rules, but we think it is entirely reasonable to infer from its absence that it was deliberately omitted, and that the reason for that omission was that it is inappropriate in the context of detention of children. Children and young people in detention are in a uniquely vulnerable position. Whilst everyone in detention must be treated with dignity and respect, children in detention have particular needs, distinct from the adult prison population, given their age and stage of development. The use of violence on vulnerable children and young people in detention can rarely be acceptable and risks breaching international human rights standards.

The Amendment Rules

43. The Secure Training Centre (Amendment) Rules 2007 amend Rules 36 and 38, and extend the circumstances in which the use of physical restraint and removal from association are permitted, namely for the purposes of ensuring “good order and discipline”.

44. The Rules are set out below, as they apply to contracted-out STCs,⁵⁴ and as amended by the 2007 Amendment Rules. The amendments are shown in bold text:

Rule 36: Removal from association

(1) Where it appears to be necessary **for the purposes of ensuring good order and discipline or** in the interests of preventing him from causing significant harm to himself or to any other person or significant damage to property that a trainee should not associate with other trainees, either generally or for particular purposes, the governor may arrange for the trainee’s removal from association accordingly.

(2) A trainee shall not be removed under this rule unless all other appropriate methods of control have been applied without success.

(3) A trainee who is placed in his own room during normal waking hours in accordance with arrangements made under this rule shall –

(a) be observed at least once in every period of 15 minutes;

(b) not be left unaccompanied during normal waking hours for a continuous period of more than 3 hours nor for periods which total in aggregate more than 3 hours in any period of 24 hours;

(c) be released from the room as soon as it is no longer necessary for the purposes mentioned in paragraph (1) above that he be removed from association; and

(d) be informed both orally and in writing for the reasons for such placement.

(4) A record shall be kept of each occasion on which a trainee is removed from association under this rule which shall specify –

(a) the name of the trainee;

⁵⁴ Rule 36, Secure Training Centre Rules 1998.

- (b) the date and time removal commenced and finished;
- (c) who authorised it;
- (d) the reasons for it and that the trainee was informed in accordance with paragraph (3)(d) above; and
- (e) any observations made in accordance with paragraph (3)(a) above;

and the record kept in accordance with this paragraph shall be made available, upon request, to the person authorised under rule 43(1) of these Rules to inspect the centre.

(5) The monitor shall be informed within 24 hours of the commencement of any removal from association under this rule and he shall be provided with a copy of the record kept under paragraph (4) above in relation to that removal.

Rule 37: Use of force

- (1) An officer dealing with a trainee shall not use force unnecessarily and, when the application of force to a trainee is necessary, no more force than is necessary shall be used.
- (2) No officer shall act deliberately in a manner calculated to provoke a trainee.

Rule 38: Physical restraint

- (1) No trainee shall be physically restrained save where necessary **for the purpose of ensuring good order and discipline or** for the purpose of preventing him from
 - (a) Escaping from custody
 - (b) Injuring himself or others
 - (c) Damaging property or
 - (d) Inciting another trainee to do anything specified in paragraph (b) or (c) above

And then only where no alternative method of **ensuring good order and discipline or** preventing the event specified in any of paragraphs (a) to (d) above is available.

- (2) No trainee shall be physically restrained under this rule except in accordance with methods approved by the Secretary of State and by an officer who has undergone a course of training which is so approved.
- (3) Particulars of every occasion on which a trainee is physically restrained under this rule shall be recorded and notified to the monitor within 12 hours of its occurrence.

45. The very short Explanatory Note to the Amendment Rules made no reference to human rights. The longer Explanatory Memorandum contained practically no reference to human rights, save for a bland assertion that because the instrument does not amend primary legislation, a statement of compatibility with the ECHR is not required. This makes it more difficult to scrutinize the Rules effectively for human rights compatibility.

Whilst we accept that the Human Rights Act 1998 does not require the Government to make a formal Section 19 statement of compatibility for statutory instruments, we consider it to be a matter of good practice for human rights considerations to be addressed in Explanatory Notes and Memoranda where necessary. This should not be an onerous requirement since the Government ought to have conducted an assessment of the human rights impact of the statutory instrument before introducing it. In areas where fundamental human rights are engaged (as they are here), we take the view that secondary legislation should always be accompanied by a statement as to compatibility with the ECHR setting out the reasons why the Government considers the instrument to be compatible.⁵⁵ Where secondary legislation raises significant human rights implications, we would expect to see sufficient analysis to facilitate effective parliamentary scrutiny.

Purpose and effect

46. Since the Amendment Rules were first proposed, there has been considerable debate about whether or not there was a need for an amendment to the existing Rules; and, if so, whether the amendment which was brought forward by the Government, was appropriate. Furthermore, there is disagreement between the Government and others as to the effect of the Amendment Rules and, in particular, whether they amend or merely clarify the law. This was the central focus of our inquiry.

Clarification or amendment?

47. The Ministry of Justice and the YJB suggest, firstly, that the Amendment Rules merely clarify the existing legal position; and, secondly, that they were an appropriate response to the comments of the coroner who conducted the inquiry into the death of Adam Rickwood. We consider each of these in turn.

48. The Explanatory Memorandum to the Rules sets out the Government's reason for amending Rule 38:

The duty to ensure good order and discipline ...has no complementary power in the 1998 Rules. While the Act makes it clear that reasonable force may be used to ensure good order and discipline, the absence of an explicit power in the 1998 Rules to use physical restraint for this purpose has caused uncertainty. The purpose of the amendment to Rule 38 is to bring the Rules into conformity with the Act.

49. The Minister told us:

When the Government laid the original order, I tried to ensure that the words “good order and discipline” applied to section 38 of the Secure Training Centre Rules 1998 so that we did have the potential for officials in secure training centres, should they so deem it necessary, to use restraint techniques for the purposes of good order and discipline.⁵⁶

⁵⁵ See e.g. Twentieth Report of Session 2006-07, *Highly Skilled Migrants: Changes to the Immigration Rules*, HL Paper 173, HC 993 at para. 56.

⁵⁶ Q 20.

50. The YJB asserts that the change to the Rules was required because there was a lack of clarity in the relationship between the Rules and the Criminal Justice and Public Order Act 1994. In its evidence to the Committee, it stated:

The Criminal Justice and Public Order Act 1994 places a duty on custody officers to maintain good order and discipline. It allows for the use of reasonable force, where necessary, to achieve this. However the Secure Training Centre Rules, which govern the use of restraint in STCs, did not explicitly permit physical restraint to be used for this purpose. Earlier legal advice was that the duty set out in the 1994 Act had primacy over the Secure Training Centre Rules. However, it became apparent at the inquest into the death of Adam Rickwood that this was not clear.⁵⁷

51. The Amendment Rules were welcomed by Rebound, one of the operators of secure training centres. Rebound stated in its evidence to us:

Currently the PCC manual and STC Rules make this a particularly grey area and open to legal interpretation. Therefore the changes to the STC rules providing clarification in this regard is welcome.⁵⁸

However, it is far from clear what problems existed under the previous Rules; nor how the “clarification” will assist staff in STCs to do their jobs effectively.

52. We have reviewed two of the contracts with STC operators. The contracts do not envisage the use of force for the purposes of good order and discipline and are very clear on this point:

Each Trainee in custody at the Secure Training Centre will only be subject to Physical Restraint as a last resort when no alternative is available and only to prevent him/her from escaping or from harming him/herself or others or from damaging property, or to prevent him/her from inciting another Trainee to harm him/herself or others or to damage property. **Physical force will not be used** at the Secure Training Centre on any Trainee **for any other purpose** nor will it be used on any Trainee simply to secure compliance with staff instructions.⁵⁹

53. The majority of witnesses to our inquiry expressed concern that the Amendment Rules have made the position less, not more, clear and have effectively expanded the range of circumstances in which restraint may be used. Witnesses expressed fears that the term “good order and discipline” is insufficiently defined and therefore potentially confusing for staff and open to abuse. The National Children’s Bureau told us that restricting the use of force to “risky” situations (as was previously the case) was an “essential safeguard”.⁶⁰ Witnesses were also anxious about the subjective nature of the Amendment Rules, particularly in determining whether or not the use of force was “necessary”, and the discretion that this will place in the hands of staff. The NSPCC and the Children’s Rights Alliance for England argue that the Amendment Rules “will not help staff judge when

⁵⁷ Ev 38, para. 1.45.

⁵⁸ Ev 52, para. 50.

⁵⁹ Contract between the Secretary of State for the Home Department and Medomsley Training Services Ltd (HINF99/855); Contract between the Secretary of State for the Home Department and ECD Olney (Dep 2008-0401), Schedule D, M5 (our emphasis). Both contracts have been deposited in the parliamentary libraries.

⁶⁰ Ev 44, para. 4.3.

restraint is appropriate”.⁶¹ Even if the intention is not to amend the circumstances in which restraint is permitted, given the vagueness of the term “good order and discipline”, this seems likely to be its effect.

54. In our view, the Amendment Rules, rather than clarifying the position, have themselves created more confusion. It is clear from the evidence that we have received, and the strength of feeling expressed, that the Rules are potentially open to a wider interpretation than was previously the case. Given the fundamental rights that are at stake, this is unacceptable.

55. At face value, the Amendment Rules introduce a new concept, that of “good order and discipline,” into the circumstances in which STC staff can use restraint. We agree with the High Court that the Amendment Rules are more than a simple clarification of pre-existing law. Indeed, the contracts we have seen with two of the STCs make this plain. In our view, the Amendment Rules now appear to permit staff a very wide discretion to determine the extent to which the use of force is necessary for “good order and discipline” and give detained young people less certainty as to the circumstances in which force may be used against them. There is a very real possibility that the Amendment Rules will lead to the use of restraint, not only when staff must take steps to protect others (whether other staff or young people), but where there is no danger to others or risk of escape. Indeed, this was demonstrated by the actual example given to us in evidence by the YJB, in which restraint was used on four boys who were not causing or threatening harm to themselves or others but were refusing an instruction to go to bed.⁶² In our view, the use of force in such widened circumstances is unacceptable and unlawful, and in breach of both ECHR standards given domestic effect by the HRA and international human rights standards contained in the UNCRC.

56. The Lord Bishop of Worcester, speaking in the House of Lords debate on the Rules, stated:

One of the things that statutory frameworks do is to create ethos, climates of opinion or cultures.⁶³

We see force in this argument. Even if the Government’s intention was merely to clarify the law, in our view there is a very serious risk that frontline staff will regard the change as either extending the circumstances in which they can use restraint or introducing considerable uncertainty about the circumstances in which they can do so.

57. The Minister told us that:

The Coroner at the inquest into Adam’s death recommended urgent action to clarify the law. We acted quickly in response to his recommendation, so that all stakeholders could be clear about the law on the use of restraint⁶⁴

and

⁶¹ Ev 67, para. 57.

⁶² Q 22.

⁶³ HL Deb, 18 July 2007, Col. 296.

⁶⁴ Ev 15.

The reason we brought the clarification forward was solely on the basis of the coroner's inquest.⁶⁵

58. Given the Government's and the YJB's reliance on the comments of the coroner to justify the Amendment Rules, we have examined closely the coroner's recommendation.

59. Following the inquest into Adam Rickwood's death, the coroner, Andrew Tweddle, wrote to the solicitor for the Secretary of State to "report to interested parties what action should be taken to prevent the recurrence of similar fatalities in the future", recommending that:

An urgent review should be undertaken to clarify the interrelationship between the Criminal Justice and Public Order Act 1994 (Section 9), the Secure Training Centre Rules issued thereunder and the Directors Rules to avoid any confusion whatsoever. It must be seen as essential that there must be no ambiguity in anyone's mind, young person, staff, management or those in the YJB or indeed Government as to when the use of restraint or force to maintain good order and discipline or for compliance reasons is authorised.⁶⁶

60. Subsequently, whilst not expressing a view about the Amendment Rules themselves, the coroner who conducted the inquest into Gareth Myatt's death also wrote to the Secretary of State for Justice in the following terms:

Whatever Parliament may decide, it is absolutely essential that there is the clearest possible definition of the circumstances in which a trainee can be subjected to physical restraint. Such clarity is required both in the interests of staff and in the interests of trainees. It was apparent during the inquest that staff were not always clear about the reasons for which PCC could be used.⁶⁷

61. Witnesses have criticised the Amendment Rules on the basis that they do not address the problem the coroner at Adam Rickwood's inquest raised. As the NSPCC and the Children's Rights Alliance told us in their joint submission:

The Amendment Rules do nothing to address the Coroner's concerns, being apparently primarily concerned with the actions of STC staff rather than introducing further safeguards for children".⁶⁸

62. The Government suggests that the coroner's recommendation did not relate to the prevention of fatalities, as the jury did not find that restraint was a causative factor in Adam Rickwood's death.⁶⁹ We find this unlikely, given that the coroner both started and concluded his letter by referring to the prevention of fatalities similar to Adam's case. It seems to us highly probable that the recommendation was intended to limit, not extend, the circumstances in which restraint may be used, and sought clarification that restraint could not be used for the purpose of good order and discipline. Whatever the coroner's

⁶⁵ Q 12.

⁶⁶ Ev 28, para. 10.

⁶⁷ 18 July 2007, p. 8.

⁶⁸ Ev 67, para. 55.

⁶⁹ Ev 20.

precise intention, the Amendment Rules pose the very real danger of entrenching in legislation ambiguity for staff and detained young people, the problem which both coroners sought to address. The phrase “good order and discipline” is imprecise, over-broad and inherently subjective. Far from achieving clarity about the circumstances in which physical restraint can be used on a child, as recommended by the coroner in the Rickwood case, instead it brings confusion. Recent events show that the use of force can lead to tragic results. It is therefore of paramount importance that the Rules governing its application leave no room for doubt. The Rules, as amended, do not achieve this.

Refusal to comply

63. When the Government informed Parliament of its intention to amend the Rules, it accepted that the term “good order and discipline” is not defined, but attempted to explain what the term would permit:

We would not anticipate that a refusal to comply with an instruction alone would constitute a breach of good order and discipline. However, where the circumstances of the refusal are such that the refusal to comply with an instruction has wider implications for the safe running of the centre, undermining the general authority of the staff or putting safety or security at risk in some other way, then a genuine concern about good order and discipline may arise.⁷⁰

64. The Code of Practice reinforces the view that restraint may not be used as punishment or to secure compliance.⁷¹ However, the NSPCC and the Children’s Rights Alliance for England (CRAE) summarise the evidence of experience in practice:

... the evidence gathered by the Carlile Inquiry, by CRAE through freedom of information requests, by the National Children’s Bureau and through the inquests into the deaths of Adam Rickwood and Gareth Myatt, suggests that physical restraint has been used routinely in STCs for unlawful purposes and, specifically, as a response to non-compliant behaviour.⁷²

65. Ofsted reported that, in Hassockfield STC, where Adam Rickwood died, restraint was often logged as being used for “non-compliance”.⁷³ 11 Million state:

Permitting restraint for the purposes of ‘ensuring good order and discipline’ is imprecise and may lead to individual custody officers restraining children or young people for failing to comply with an order such as to tidy up, attend class or go to bed, construing their action as a threat to ‘good order and discipline’.⁷⁴

66. When giving evidence to us, we were pleased to hear both the Minister’s and the YJB’s strong resolve not to permit the use of restraint as punishment or to secure compliance. The YJB told us that “it would be a sackable offence” if staff were using restraint in this way and the Minister stated that he would “take a very dim view and would be looking at very

⁷⁰ HC Deb, 21 June 2007, Col. 113-4WS.

⁷¹ Para. 10.4.

⁷² Ev 66, para. 51.

⁷³ Ev 69, para. 4.

⁷⁴ Ev 69, para. 2.

serious action” if a STC used restraint for those purposes.⁷⁵ **We welcome these comments but note that the structural mechanisms need to be in place to ensure that high level commitments translate into action on the ground.** In the following Chapter, we consider some of the current methods for implementing this policy and make suggestions for more effective implementation.

Consultation

67. The YJB and the Directors of STCs were apparently consulted about the proposed changes to the STC Rules, and were in agreement with the Government’s proposal, but there was no consultation beyond this limited group.⁷⁶ Even the Ministry of Justice’s own panel of experts, the Physical Control in Care Review Panel, was not informed. In any case, the Panel had not met since March 2005.⁷⁷ The Minister confirmed that this was the case, but stated:

... it should be understood that the panel does not have a continuous existence. In fact, a number of panels have been convened over the years to make recommendations on PCC techniques. There was no panel in existence at the time in question. Perhaps, more importantly, the panel’s role is to advise whether individual techniques are safe, not when restraint should or should not be used.⁷⁸

68. The Children’s Commissioner, who has “a statutory responsibility to promote awareness of the views and interests of children in England”,⁷⁹ was not consulted. Other witnesses also expressed concern about the lack of public and specialist consultation,⁸⁰ which was also one of the grounds relied on in a recent judicial review application challenging the lawfulness of the Amendment Rules.⁸¹

69. The Minister attempted to explain the lack of consultation as follows:

Any consultation exercise would require a policy proposal on which consultees could comment. As we did not intend to change Government policy on the use of physical restraint ... we did not consider such an exercise was possible.⁸²

70. In its recent judgment, the High Court disagreed with the Government’s argument, holding that the Amendment Rules could be characterised as a “significant change of policy” giving rise to a duty to consult the Children’s Commissioner.⁸³ **Given the arguments which have arisen as to the purpose and effect of the Amendment Rules and the judgment of the High Court, we do not accept that consultation about the change was unnecessary or impossible. At the very least, a short period of consultation with**

⁷⁵ Q 28.

⁷⁶ HL Deb, 18 Jul 2007, col. 304.

⁷⁷ Ev 67, para. 63 and Inquest June 2007 Briefing, p. 3.

⁷⁸ Ev 27.

⁷⁹ Ev 69, para. 2.

⁸⁰ Ev 61, para. 2.

⁸¹ *R (on the application of AC) v Secretary of State for Justice* [2008] EWHC 171 (Admin).

⁸² Ev 27.

⁸³ *R (on the application of AC) v Secretary of State for Justice* [2008] EWHC 171 (Admin), para. 35.

specialist professionals working in this area should have taken place. This could have prevented some of the anxieties which have been expressed since the Rules came into force, and ensured that the Rules met the coroner's objectives and protect children's rights.

Conclusion

71. We were pleased to note that, as at the date of our oral evidence session, there had been no instances of the use of restraint for good order and discipline since the Amendment Rules came into force.⁸⁴ We urge the Government and the YJB to continue carefully to monitor the effect of the Amendment Rules; and in particular, to ensure that there is no increase in the number of restraints, and that the use of restraint for the purposes of "good order and discipline" is always strictly necessary and proportionate.

72. We recommend that the Government reports on a six monthly basis to Parliament on the number of restraint incidents, broken down by the specific purposes for which restraint was necessary.

73. The STC Rules need to be clear, so that staff know what they may lawfully do; detained young people and their families know how they may be treated; and resort to physical force only takes place when it is absolutely necessary to avert a risk of serious harm to others. For the reasons we have given above, we do not consider that the current Rules are sufficiently clear about when force can be used and, for that reason, they are both potentially in breach of the UK's human rights obligations on their face, and likely to lead to such breaches in practice when force is used in circumstances when it is not strictly necessary.

74. We recommend that the Amendment Rules be repealed and the scope of the current STC Rules clarified by Amendment Rules which make it explicitly clear that the use of physical restraint is not permissible for the purposes of good order and discipline. In our view, this would provide a more humane and transparent framework for the effective operation of STCs, which meets the coroner's objectives and protects appropriately the safety of all children in STCs. Any further amendment to the Rules should this time be preceded by a short period of consultation with the YJB, STCs, Children's Commissioner and expert NGOs, amongst others. It should also take account of up to date medical advice on the effect of restraint on the physical and mental integrity of detained children and young people.

⁸⁴ Q 20.

4 The use of restraint in practice

75. This Chapter looks at the use of restraint in STCs in practice; and the effectiveness of the current methods for implementing Government policy. We have particularly focused on areas where we consider that more can be done to ensure that the rights of children and young people in detention are protected.

Roles and responsibilities

76. The Ministry of Justice and the YJB, as public authorities under the HRA, are required to act compatibly with human rights. STCs are private companies with which the YJB contracts to perform the Secretary of State's and YJB's statutory duties. Notwithstanding these contractual relationships, the Secretary of State and the YJB retain overall responsibility for ensuring that the rights of children and young people in detention (including STCs) are protected.

77. Concerns have been expressed over the precise responsibilities of the Ministry of Justice and the YJB for PCC. The coroner at Gareth Myatt's inquest recommended that the two bodies should "publicly clarify where responsibility for the system of PCC and its permitted use lies."⁸⁵

78. Since June 2007, the Ministry of Justice has had a "shared understanding of policy details with the Department for Children, Schools and Families".⁸⁶ In November 2007, a new joint Youth Justice Unit was launched between the Ministry of Justice and the Department for Children, Schools and Families, which has the aims of:

- i) contributing to the protection of the public by developing policy and law in relation to children and young people who offend and are at risk of offending; and
- ii) ensuring that children and young people in contact with the criminal justice system achieve all five outcomes of *Every Child Matters*, i.e. to be healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being.⁸⁷

79. The Unit also sponsors the work of the YJB. Although we requested a copy of the Memorandum of Understanding between the Ministry of Justice and the Department for Children, Schools and Families, this was not provided.

80. We are pleased to note the establishment of a joint unit, which we hope will go some way to dealing with the coroner's concerns. We urge the unit to ensure that there is greater focus on child protection and the needs and rights of vulnerable children within the criminal justice system. The proposed Memorandum of Understanding should clarify the mutual roles and responsibilities of each of the bodies, to ensure that vulnerable children do not fall between them. We also hope that the new Unit will lead to better monitoring of the YJB and its performance, particularly during this period of transition as a new Chair comes into post.

⁸⁵ Coroner's letter to the Secretary of State for Justice, 18 July 2007.

⁸⁶ Q 37.

⁸⁷ Ev 24.

The reviews

81. In 2003, the National Children’s Bureau was commissioned by the YJB to undertake a review of physical intervention within secure settings for under 18 year olds. In its evidence to us, the NCB states:

The final report revealed a fragmented approach, with different criteria for both the use of restraint and the methods that could be used.⁸⁸

82. It identified an urgent need for an evaluation of the safety and effectiveness of restraint techniques.⁸⁹ On 26 July 2007, the Government announced a review into the use of restraint. The broad terms of reference of the review are:

... to encompass policy and practice on the use of restraint across a range of juvenile secure settings including Secure Training Centres (STC), Secure Children’s Homes (SCH) and Young Offender Institutions (YOIs).

83. We are pleased to note that the review will encompass, amongst other things, the “operational efficacy, safety (including medical safety) and ethical validity of restraint methods”, staff training and monitoring, and the respective responsibilities of the Ministry of Justice, Department for Children, Schools and Families, the YJB and institutional providers. **We would encourage the widest possible review of the use of restraint against children and young people in a variety of settings and urge the Government and the YJB to consider the results of the review carefully and promptly and to publish the review’s findings and the Government’s response in a timely manner.**

84. The Ministry of Justice told us that in addition to the broader review which it announced in July, a Medical Review Panel met on 2 November 2007 and plans to meet early in 2008, “before finalising its recommendations to the two Departments”.⁹⁰ The Minister assured us that he would reflect on the Panel’s findings and would publish its recommendations and the Government’s response.⁹¹ **We welcome the re-establishment of the Medical Review Panel and seek the Government’s assurance that it will now meet regularly and frequently, in order to keep the full range of PCC techniques under careful scrutiny. Following its current deliberations, we recommend that the Review Panel reports annually, at a minimum, on the medical safety of current PCC techniques.**

85. We note the evidence of Rebound, who told us of their “significant concerns about the safety of the PCC both for young people and the staff ...it is sometimes not possible to put on PCC holds. It is also difficult to safely apply the head support.”⁹² **We urge the Government to ensure that, as part of the medical review, the views of STCs and specialist organisations are considered, in particular to address any concerns from those being subjected to the use of force or implementing restraint techniques.**

⁸⁸ Ev 43, para. 1.2.

⁸⁹ Ev 43, para. 1.2.

⁹⁰ Ev 24. See also Ev 38, para. 1.43.

⁹¹ Q34 and Ev 24.

⁹² Ev 52, para. 55.

86. We are pleased to note that two techniques were suspended in December 2007, on the basis of medical advice. We recommend that the Government seriously consider the necessity and proportionality of restraint holds or techniques carrying a risk of death or serious injury. There can be no justification for practices which involve the deliberate infliction of pain,⁹³ such as the so-called “distraction techniques”, and we therefore recommend their abolition without delay.

Monitoring and reporting

87. The YJB and Ministry of Justice point to YJB Monitors⁹⁴ as an integral safeguard for PCC. The Monitors check the adherence of STCs to their contracts, including their use of restraint. When restraint is used, an incident form must be completed by those involved. These reports may be reviewed by the YJB Monitors.⁹⁵ The Minister told us that if the YJB has concerns about the level of restraint in a STC, they will investigate. He also said that the YJB Monitor is able to refer concerns to the local child protection agencies or raise them with the STC itself.⁹⁶ He assured us that YJB Monitors are not simply a “rubber stamp”.⁹⁷

88. The Coroner in the inquest into the death of Gareth Myatt made a recommendation about these incident reports. He suggested that:

... every statutory Incident Report involving the use of PCC should contain full details of what happened, statements by those involved, any injury to a trainee or to staff, reasons for the use of PCC and reasons why other means of dealing with the situation were not used or had proved unsuccessful. Such Reports must also include a statement by the trainee, in their own hand where possible, and the form should provide the opportunity for a trainee to report any injury. Up to the time of Gareth’s death there was no input from the child into this Reporting system. The new Reports should include a facility for both staff and trainees to conclude what lessons they had learned from the incident and how PCC might be avoided on a future occasion.

This need for the trainee’s account... came to be referred to during the Inquest as “listening to the voice of the child”. That phrase is a telling one, and is one that ought to be borne in mind by everyone at all times.⁹⁸

We agree with this recommendation.

89. According to the Minister, “specific training in PCC ... is being arranged for Monitors of STCs”⁹⁹ and that “some Monitors already have this [training] but require refresher training”.¹⁰⁰ **We find it astonishing that YJB Monitors, one of the safeguards relied on by the Government and the YJB for the safe use of restraint, have not until now**

⁹³ See UN Committee on the Rights of the Child, General Comment 8 (2006), para. 15.

⁹⁴ Established under section 9 Criminal Justice and Public Order Act 1994.

⁹⁵ Ev 50, para. 29 and Ev 25.

⁹⁶ Ev 25.

⁹⁷ Q 27.

⁹⁸ Letter from His Honour Judge Pollard to the Secretary of State for Justice, 18 July 2007, Action 2.

⁹⁹ Ev 26.

¹⁰⁰ Ev 26.

routinely been trained on restraint procedures themselves. We recommend that this omission be urgently rectified. All YJB Monitors should receive initial training in restraint techniques and any YJB Monitors who have been trained previously should receive regular refresher training. There should be specific monitoring of the effect of the Amendment Rules both in quantitative (i.e. the number of restraints) and qualitative terms, with the reporting of results to this Committee and Parliament.

Duties of Secure Training Centres

90. The Secretary of State for Justice has recently confirmed to us that, in his view, non-governmental bodies providing contracted-out services in the criminal justice system, such as STCs, are functional public authorities for the purposes of the Human Rights Act 1998 and are therefore subject to the Act in respect of those contracted-out functions.¹⁰¹ We have reviewed two contracts with STCs. The contracts set out the duty of the STC contractor as follows:

The Contractor shall at all times operate the STCs in accordance with all relevant statutory provisions including but not limited to the 1994 Act, the Prison Act 1952 and the STC Rules.¹⁰²

91. Although the contracts are over 130 pages long, plus Schedules, they make only two references to human rights (namely, including the Human Rights Act in legislation listed in the “interpretation” section; and referring to the possibility of trainees complaining to the European Commission on Human Rights (abolished in 1998)), despite containing discrete sections on sex and race discrimination and data protection.¹⁰³ The requirement to act compatibly with human rights is not an express contractual requirement which is subject to audit. We see this as further evidence of the failure to put the rights and needs of children and young people at the heart of the STC regime. **We recommend that human rights obligations be included in the body of any future contracts with STC providers and that Schedule H include compliance with human rights obligations within the performance measures under the contract. In addition, the YJB should write to existing STC providers to explain their human rights obligations and reiterate the expectations of the Secretary of State.**

92. Following the introduction of the STC (Amendment) Rules, the Chief Executive of the YJB wrote to all STCs to inform them of the effect of the Amendment Rules. The YJB told us that they made explicit “its view that the change to the rules governing restraint in STC should not lead to an increase in the use of restraint.”¹⁰⁴ In her letter, the Chief Executive stated that restraint should not be used for compliance and should only be used as a last resort where no alternative method is available. The Minister told us that since the Chief Executive of the YJB had written to STCs about the Amendment Rules, “the onus is now

¹⁰¹ Letter from the Rt Hon Jack Straw MP, 21 January 2008, in Eighth Report of Session 2007-08, *Legislative Scrutiny: Health and Social Care Bill*, HL Paper 46, HC 303, p. 66.

¹⁰² Contract between the Secretary of State for the Home Department and Medomsley Training Services Ltd (HINF99/855); Contract between the Secretary of State for the Home Department and ECD Olney (Dep 2008-0401), para. 33.2.

¹⁰³ For our broader views on the effectiveness of contractual provisions on ensuring human rights compliance, see Ninth Report of Session 2006-07, *The Meaning of Public Authority under the Human Rights Act*, HL paper 77, HC 410, Chapters 2 and 4.

¹⁰⁴ Ev 38, para. 1.46.

on operators to ensure that their staff understand and follow the Rules.”¹⁰⁵ The YJB told us that it is a matter of the STCs’ “operational judgement” as to whether or not restraint is necessary, and they can be held to account for the judgment that they make.¹⁰⁶

93. When we asked what guidance is provided to staff themselves to enable them to assess, in advance, whether or not the force they intend to use is proportionate, the Minister noted that STCs issue “local operating instructions to staff” to assist them in making judgements.¹⁰⁷ We have not been provided with examples of such local operating instructions. **It is vitally important that operating instructions are clear, accessible, and provide worked examples of different situations, to demonstrate to staff how to determine if the force is or is not an action of last resort, and how to decide whether an action is necessary and proportionate. We recommend that the YJB actively monitor the local operating instructions, to ensure that they meet STCs’ human rights obligations and accurately reflect the legal position.**

94. In their joint evidence to the Committee, the NSPCC and the Children’s Rights Alliance for England comment that:

Concerns have been raised about potential conflicts of interest, given that the private firms managing STCs must meet targets for children’s participation in education in order to secure financial rewards. It became apparent from interviews with children during the Carlile inquiry that restraint was being used to ensure children attended education sessions.¹⁰⁸

95. The Minister told us that:

It would not be my policy nor indeed that of the chief executive to have restraint techniques used to encourage individuals to participate in educational opportunities. The STC rules themselves are in the contract for the STCs and it is understood that they have to adhere to that contract as well as the Code of Practice.¹⁰⁹

96. We were pleased to hear the Minister’s assurance that restraint is not permitted to enable STCs to meet educational or other targets. We urge the YJB to continue to pay close attention to any correlation between targets and restraint.

97. The NSPCC and the Children’s Rights Alliance for England advocate that:

There should be a legal duty on all providers of education, health and custodial settings that use physical restraint to inform children and their parents or carers of their restraint policy, the methods used and the safeguards in place.¹¹⁰

¹⁰⁵ Ev 25.

¹⁰⁶ Q 27.

¹⁰⁷ Ev 25.

¹⁰⁸ Ev 67, para. 58. See also Howard League for Penal Reform, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes*, January 2006, p. 43.

¹⁰⁹ Q 38.

¹¹⁰ Ev 62, para. 15.

98. Section 7 of the Secure Training Centre Rules 1998 requires STCs to provide a detained young person:

... with information in writing about those provisions of these Rules and other matters which it is necessary that he should know, including privileges, incentives and sanctions, contact with members of his family or independent persons and the proper method of using the grievance procedure.

99. When we asked the Minister for his views on the suggestion of a duty to provide information on physical restraint, the Minister told us that he would reflect on it, but did not want to pre-empt the review.¹¹¹ **Requiring STCs to provide affected individuals with their restraint policies may assist staff and detained young people and their families and carers to understand when restraint may be used. In the absence of any countervailing argument (which we cannot discern), we see no good reason for keeping such policies secret. Indeed, it seems to us that Section 7 of the Rules already requires information on restraint to be provided to detainees and their families and carers. We recommend that this provision should be immediately implemented by STC operators.**

100. According to the YJB, under its contract with STC providers, all custody staff must undertake a training course which must include training on physical restraint by accredited Home Office instructors. Refresher physical restraint training must be given at regular intervals (at least once a year) by accredited instructors.¹¹² Rebound described to us the way it trains its STC staff in the use of restraint:

23. All staff employed by Rebound are fully trained in PCC techniques. During the ITC staff must successfully complete and pass an initial five-day intensive PCC course. In order to maintain the Home Office certification as a Custody Officer staff are required to have annual refresher training which is a one-day course delivered by a PCC instructor. Rebound staff undertake PCC refresher every 6 months which is above contractual requirements.

24. Initially the HM Prison Service trained all staff employed by Rebound in PCC. The Prison Service then devised a PCC Instructor's course which was approved by the Home Office. Selected candidates from Rebound undertake a two-week training course which is delivered by the Prison Service. Once the candidates have completed and successfully passed the course they are accredited by the Prison Service to train others in PCC. The instructors have an annual week's refresher training by the Prison Service to maintain their accreditation. They follow the PCC manual which is written by the Prison Service and approved by the YJB.¹¹³

101. Staff are not provided with a copy of the PCC manual, although the Ministry of Justice states that it is reviewing what written guidance custody officers need.¹¹⁴

102. Both the coroners who conducted the recent inquests into the deaths of Gareth Myatt and Adam Rickwood identified problems with existing staff training. The coroner at

¹¹¹ Q 36.

¹¹² Ev 37, para. 1.36.

¹¹³ Ev 49.

¹¹⁴ Ev 23.

Gareth Myatt's inquest recommended that the Ministry of Justice and the YJB consider teaching PCC at national level by national instructors or, as a bare minimum, that the Ministry of Justice institute nationally based supervision and inspection of local teaching.¹¹⁵ The Minister told us that this recommendation was being considered by the PCC Management Board.¹¹⁶ The coroner at Adam Rickwood's inquest suggested that there was confusion amongst trainers "with regard to PCC its application and the reasons therefore and when if ever guidance in the appropriate manuals could be disregarded".¹¹⁷

103. Ensuring that staff are appropriately trained is vital in the protection of the rights of detained young people and children, particularly where restraint is permitted. This requires both frontline staff and their instructors to be absolutely clear on the circumstances in which restraint is permitted. We are concerned to hear that staff considered that there might be circumstances in which guidance need not be followed. We recommend that all staff working in STCs receive targeted and regular training in human rights principles and how they apply to their work, including the use of restraint. This should be included as a core training requirement in Appendix 7 of Schedule D to the standard contract with STCs. Further, all staff, whether or not they are already trained, should receive training, as a matter of urgency, on the effect of the Amendment Rules. Standard training should be regularly reviewed, to ensure that it remains accurate and up to date. Training of STC staff should be subject to supervision and monitoring by the Ministry of Justice.

Code of Practice

104. In 1998, the YJB published a 12 page Code of Practice entitled *Managing the Behaviour of Children and Young People in the Secure Estate*, which has no statutory force, but is issued as guidance. In its evidence, the YJB states:

We believe that the standards set out in our Code of Practice reflect, and are compliant with, international conventions and treaties, including the United Nations Convention on the Rights of the Child.¹¹⁸

105. The Code is written in very general terms. Relevant parts of the Code of Practice include:

- restrictive physical interventions must only be used as the result of a risk assessment;
- restrictive physical interventions must not be used as a punishment, or merely to secure compliance with staff instructions; and
- the degree of physical intervention must be proportionate to the assessed risk.¹¹⁹

106. The Minister and the YJB deny that the Code of Practice needs to be amended in the light of the Amendment Rules.¹²⁰ However, in answer to our questions in oral evidence, the

¹¹⁵ Coroner's letter to the Secretary of State for Justice, 18 July 2007, p. 11.

¹¹⁶ Ev 25.

¹¹⁷ Ev 28, para. 5.

¹¹⁸ Ev 36, para. 1.24.

¹¹⁹ Code of Practice, paras. 10.2, 10.4 and 10.9.

Minister agreed that the Code could be revised in the light of the review's recommendations.¹²¹

107. Whilst we welcome the Government's commitment to amending the Code in the light of the review, we consider that it should have amended the Code when the Amendment Rules came into force, given the different ways in which the Rules can be interpreted and, therefore, the potential for ambiguity they create. We recommend that there be a presumption that the Code be amended whenever the Rules are amended, in order to ensure that there is no confusion in the minds of staff about the effect of any Amendments on what they are and are not permitted to do. As part of, or in addition to the Code, very detailed guidance needs to be provided to staff on the precise circumstances in which restraint may lawfully be used. We consider this further in the paragraphs which follow.

Physical Control in Care Training Manual

108. The part of the PCC Manual produced by the Prison Service for training instructors in PCC, which details the restraint holds and techniques, is not publicly available. According to the Minister, "dissemination of it could affect security at secure training centres".¹²² In oral evidence, we pursued the Government's reasons for restricting access to the whole of this document, noting that we would be better able effectively to scrutinise its compatibility with human rights standards if we could read it. The Minister resisted the suggestion that the manual should be made public, stating:

The public scrutiny of those techniques is not something I would wish to see, not for the reason of lack of public scrutiny but because, ultimately, they are techniques which are used for control.¹²³

109. The Minister has subsequently amplified his response stating:

The Prison Service considers that placing descriptions of the individual techniques in the public domain might lead to their being attempted by people who had not received the necessary training. That could place people at risk.

During the hearing of oral evidence, Dr Harris made the point that other potentially dangerous information, for example about surgical techniques, was in the public domain. However, that may be because of the practical difficulty or impossibility of limiting its availability, rather than the desirability of its being widely available.¹²⁴

110. The YJB concurred with the Minister's view, which was based on the Prison Service's advice stating:

¹²⁰ Ev 15.

¹²¹ Q 35.

¹²² Ev 15.

¹²³ Q 4.

¹²⁴ Ev 23.

If how the techniques are used is understood then it is possible for young people to develop counter-techniques, and so it affects the overall efficacy of the system.¹²⁵

111. We were alarmed by the headings of some of the redacted sections, namely ‘hair grab’, ‘strangle against the wall’, ‘strangle on the ground’, ‘kicks standing’ and ‘kicks on the floor’. It was not possible to ascertain the content of these sections. We have seen the remaining publicly available parts of the manual which set out, in summary form, some of the human rights principles which apply. We were alarmed to see that there is little guidance about the core material that should be covered by instructors during the training, in order to ensure consistent standards across STCs. Indeed the Manual notes that “it is not possible to reproduce within this manual all the teaching points that instructors must necessarily relate to trainees as only a brief description of the techniques and systems of PCC training is given”, and advises instructors to produce their own comprehensive lesson plans.¹²⁶ We also note that the manual is intended for instructors of PCC, but is not aimed at or provided to staff who are trained to use restraint.

112. We recommend that the training manual (which should be disseminated to all STC staff who are authorised to use PCC, and all instructors and monitors) be regularly reviewed and, if necessary, updated to ensure that it remains current and accurate. Staff need to be absolutely clear about the circumstances in which restraint is lawfully permitted. The manual should make clear that violence is allowed only in narrowly construed circumstances. Furthermore, the manual needs to provide greater guidance to instructors about the core elements of which staff using restraint need to be aware and to follow, in order to ensure consistency and clarity across the STC estate. Finally, the manual should be updated as a matter of urgency to remove reference to the two suspended techniques.

113. We have examined the rationale for not publishing the manual in its entirety. We do not consider that the Minister or the YJB have made a convincing case for continuing confidentiality. We are also very concerned by the impossibility of scrutinising for human rights compatibility techniques of physical restraint which remain secret. We therefore recommend that the entire manual be made publicly available, including on the websites of the Ministry of Justice, the Department for Children, Schools and Families, the Youth Justice Board and the Prison Service. A full copy should also be placed in the libraries of both Houses.

Last resort

114. Rule 38 provides that physical restraint may only be used where “no alternative method” is available. The YJB’s Code of Practice states that “restrictive physical intervention must only be used as a last resort, when there is no alternative available or other options have been exhausted.”¹²⁷ An example of the deficiencies in the Manual is demonstrated in its consideration of staff reporting of restraint incidents.

¹²⁵ Q 7.

¹²⁶ p. 44.

¹²⁷ Para. 10.6.

115. We pressed the Minister and the Youth Justice Board on the evidence that they would expect to see, to demonstrate that restraint had been used as a last resort and after all other options had been exhausted. In particular, we questioned whether it was possible to prove, with any degree of certainty, that all options had been exhausted. Such a position is beneficial to neither detained young people nor to staff. The Minister stated:

The [YJB] Monitor and the STC Director will consider what other options (if any) were attempted, and whether options that were not attempted might have been attempted with any realistic prospect of success. If the matter is referred to the Youth Justice Board, it will also consider those questions.¹²⁸

116. Staff involved with a restraint incident are required to produce reports after the event. This appears to be one method of determining whether or not the force used was lawful. The PCC Manual explains the rationale for staff reports as follows:

The purpose of the member of staff writing the report is to justify their actions and to demonstrate that the use of force was:

- reasonable in the circumstances
- necessity [sic]
- no more force than was necessary
- proportionate to the seriousness of the situation.

...

Copies of the Use of Force Report Form may be produced for internal or external investigations. It is important that when a written statement is given it creates as full a picture as possible in order to justify the actions that have been taken.¹²⁹

117. Difficulties inevitably arise when attempting to prove that no alternatives to a particular course of action were available and, that force was used as a last resort. **Accessible guidance is needed for staff, so that they understand clearly the actions that they need to consider before they use force. This should not be a “tick box” exercise, but should enable staff to be confident that they are carrying out their work lawfully and with full respect for the rights of all those in their care.**

118. **We are concerned that the focus of the manual is on justifying staff action, rather than on explaining what happened, justifying the use of force as lawful and that, where it was not, ensuring appropriate action is taken and lessons learnt for the future. The manual appears to prioritise the needs of staff over the needs of detainees. We recommend that the YJB review the PCC manual to address these concerns.**

¹²⁸ Ev 24.

¹²⁹ pp. 29-30.

Conclusions and recommendations

Introduction

1. The state has a duty to ensure that detained young people and STC staff are protected from abuse or violence. It is therefore incumbent on the state to take positive steps to ensure that detainees and staff are not injured by other detainees, and conversely that detainees are not injured by staff. (Paragraph 29)
2. We are dissatisfied by the Minister's explanation of how current policy and practice comply with human right standards. The Minister appears to be suggesting, first of all, that the state is not required to comply with General Comments of the UN Committee on the Rights of the Child, and simply with the Convention itself. While this may be strictly correct as a matter of international legal obligation, we are very disappointed by the Government's apparent lack of respect for the interpretations of the UNCRC by the UN Committee in its General Comments. We regard these comments as being fundamental to an understanding of the State's obligations under the UNCRC. (Paragraph 30)
3. The Minister also appears to distinguish between the use of force or restraint and the application of violence. Such a distinction does not feature in human rights law. The key question is whether the use of restraint can be justified in the circumstances. Whilst the Minister robustly states that the Government does not sanction violence against children, this is exactly what current legislation permits, albeit using the terminology of "force" rather than violence. We start from the premise that violence against children should be avoided unless absolutely necessary and that very weighty justifications are required to demonstrate the need for force in individual cases. (Paragraph 31)
4. On average, restraint is used on ten occasions per child per year. (Paragraph 32)
5. We have not been able to establish conclusively why the phrase "good order and discipline" was not included in the original STC Rules, but we think it is entirely reasonable to infer from its absence that it was deliberately omitted, and that the reason for that omission was that it is inappropriate in the context of detention of children. Children and young people in detention are in a uniquely vulnerable position. Whilst everyone in detention must be treated with dignity and respect, children in detention have particular needs, distinct from the adult prison population, given their age and stage of development. The use of violence on vulnerable children and young people in detention can rarely be acceptable and risks breaching international human rights standards. (Paragraph 42)
6. Whilst we accept that the Human Rights Act 1998 does not require the Government to make a formal Section 19 statement of compatibility for statutory instruments, we consider it to be a matter of good practice for human rights considerations to be addressed in Explanatory Notes and Memoranda where necessary. This should not be an onerous requirement since the Government ought to have conducted an assessment of the human rights impact of the statutory instrument before

introducing it. In areas where fundamental human rights are engaged (as they are here), we take the view that secondary legislation should always be accompanied by a statement as to compatibility with the ECHR setting out the reasons why the Government considers the instrument to be compatible. Where secondary legislation raises significant human rights implications, we would expect to see sufficient analysis to facilitate effective parliamentary scrutiny. (Paragraph 45)

7. In our view, the Amendment Rules, rather than clarifying the position, have themselves created more confusion. It is clear from the evidence that we have received, and the strength of feeling expressed, that the Rules are potentially open to a wider interpretation than was previously the case. Given the fundamental rights that are at stake, this is unacceptable. (Paragraph 54)
8. At face value, the Amendment Rules introduce a new concept, that of “good order and discipline,” into the circumstances in which STC staff can use restraint. We agree with the High Court that the Amendment Rules are more than a simple clarification of pre-existing law. Indeed, the contracts we have seen with two of the STCs make this plain. In our view, the Amendment Rules now appear to permit staff a very wide discretion to determine the extent to which the use of force is necessary for “good order and discipline” and give detained young people less certainty as to the circumstances in which force may be used against them. There is a very real possibility that the Amendment Rules will lead to the use of restraint, not only when staff must take steps to protect others (whether other staff or young people), but where there is no danger to others or risk of escape. Indeed, this was demonstrated by the actual example given to us in evidence by the YJB, in which restraint was used on four boys who were not causing or threatening harm to themselves or others but were refusing an instruction to go to bed. In our view, the use of force in such widened circumstances is unacceptable and unlawful, and in breach of both ECHR standards given domestic effect by the HRA and international human rights standards contained in the UNCRC. (Paragraph 55)
9. Even if the Government’s intention was merely to clarify the law, in our view there is a very serious risk that frontline staff will regard the change as either extending the circumstances in which they can use restraint or introducing considerable uncertainty about the circumstances in which they can do so. (Paragraph 56)
10. The Amendment Rules pose the very real danger of entrenching in legislation ambiguity for staff and detained young people, the problem which both coroners sought to address. The phrase “good order and discipline” is imprecise, over-broad and inherently subjective. Far from achieving clarity about the circumstances in which physical restraint can be used on a child, as recommended by the coroner in the Rickwood case, instead it brings confusion. Recent events show that the use of force can lead to tragic results. It is therefore of paramount importance that the Rules governing its application leave no room for doubt. The Rules, as amended, do not achieve this. (Paragraph 62)
11. Structural mechanisms need to be in place to ensure that high level commitments [not to permit the use of restraint as punishment or to secure compliance] translate into action on the ground. (Paragraph 66)

