

## **SUBMISSION TO MINISTRY OF JUSTICE: AUTHORISATION OF PAIN-INDUCING RESTRAINT ON CHILDREN DURING ESCORTS**

### **Introduction**

1. This submission aims to assist the Ministry of Justice in considering the implications of removing pain-inducing techniques during the escorting by GEOAme of children detained in secure children's homes and secure training centres.
2. On 1<sup>st</sup> August 2017, lawyers acting for Article 39 wrote to the Secretary of State for Justice setting out our proposed judicial review of:
  - a. The authorisation of pain-inducing restraint techniques during the escorting of a child to be detained in a secure children's home, where such a power is impermissible within the same secure home
  - b. The lack of clarity and/or failure to circumscribe the use of restraint during escorting by way of a statutory instrument
  - c. Any failure to undertake a risk and equality impact assessment of the use of Minimising and Managing Physical Restraint (MMPR) techniques on children sent to secure children's homes.<sup>1</sup>
3. We received a response from the Government Legal Department on 8<sup>th</sup> November 2017, indicating the welcome news that the Ministry of Justice:

*... is going to give further consideration to the issue of whether it remains necessary, or advisable, for such techniques to be theoretically available to escorting contractors, and to consider the implications of removing those techniques in terms of the safety of all concerned. [Our emphasis].*
4. Further requested correspondence arrived on 14<sup>th</sup> November 2017.
5. Although our letter to the Ministry of Justice focused on escorts and secure children's homes, our concerns about pain-inducing restraint obviously extend to children detained in secure training centres too. We are very pleased the Ministry of Justice is reviewing the authorisation of pain-inducing techniques for escorting contractors working with both groups of children.

## About Article 39

6. Article 39 fights for the rights of children living in institutions in England. We are a registered charity (no. 1166092). Our name comes from Article 39 of the United Nations Convention on the Rights of the Child, which entitles children to recover from abuse and neglect in environments that nurture their health, self-respect and dignity. Article 39's Director is a registered social worker who in the earlier part of her career frequently drove children alone, in her own car, to and from residential placements, police stations and criminal courts.

## The death of Adam Rickwood

7. There can be no greater illustration of the profound harm caused by the deliberate infliction of pain than the account left by 14 year-old Adam Rickwood.
8. Before he hanged himself in his cell in Hassockfield secure training centre in Durham, in 2004, Adam wrote a letter for his solicitor:

*On the 8<sup>th</sup> August at approx 06:50 pm I was sat at the table on the wing 2 Bravo. And my friend was messing about, so he was put in his cell for 30 minutes (time out). When my friend was in his cell he asked me to go over to his door. When I went over he slid a piece of paper under the door and asked me to give it to a female member of staff.*

*When I gave the paper to her she told me to get in my room. I asked why and she said, "Just go in". Then at that point I refused because there were no explicit reason for this. Then she called for first response (assistance from other staff). When the other staff came they all jumped on me and started to put my arms up my back and hitting me in the nose, so I then tried to bite one of the staff's hand because they were really hurting me. My nose started bleeding and swelled up. It didn't stop bleeding for about one hour and afterwards it was swelled badly and really sore and hurting me a lot. 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 draw blood?' and they said it was a restraint. When I asked the nurse to see me she would not order an escort to take me to hospital and just stated it was badly swelled and will continue to do so.<sup>2</sup>*

9. The second inquest into Adam's death concluded that the use of restraint had been unlawful, and in particular the use of the 'nose distraction' had been unlawful, and that both unlawful acts had more than minimally contributed to him taking his own life.<sup>3</sup>
10. We believe this boy's utterly tragic death should have led to the cessation of pain-inducing restraint in custodial institutions. This did not happen. That the Ministry of Justice is now considering at least prohibiting the use of pain infliction during the escorting process for children detained in secure children's homes and secure training centres is very welcome progress. We hope it signals a fresh, genuinely child-centred

approach, aligned with the findings and recommendations of both Charlie Taylor’s Review<sup>4</sup> and the Medway Improvement Board.<sup>5</sup>

## Children detained in secure children’s homes and secure training centres

11. There is wide consensus that detained children are among the most vulnerable in our society. Data submitted by youth offending teams (YOTs) to the Youth Justice Board between 2014 and 2016 showed children admitted to secure children’s homes and secure training centres have very high degrees of vulnerability:<sup>6</sup>

Nature of concern	% of children YOTs were concerned about – secure children’s homes	% of children YOTs were concerned about – secure training centres
Learning disability or difficulty	47%	37%
Suicide or self-harm	46%	40%
Substance misuse	45%	46%
Mental health	44%	41%
Physical health	41%	31%
Looked after child prior to detention	40%	38%
Sexual exploitation	25%	15%
Current child protection plan	17%	7%

## Escorting experience

12. We are very pleased to hear that GEOAmeY escort custody officers, although trained and authorised to inflict pain on children as a form of restraint since 2016, have not done so to date.
13. Children remanded or sentenced to custody from court will have often spent many hours waiting for an escort to take them to a custodial institution. They would have last seen their parents and carers in the courtroom, before they were ‘sent down’. They will be upset, frightened and anxious about what awaits them in custody. The younger and more vulnerable the child, the greater the distress. Positive and caring communication, reassurance and patience are the most effective means of calming down anxious and fretful children. They are also key ingredients for a safe and trouble-free journey.
14. For children with no prior experience of custody, the escorting process is their first introduction to detention. A positive escorting experience, undertaken by skilled and compassionate officers, could make all the difference to how well children are able to settle into custody.
15. The escorting process removes highly vulnerable children from court cells – a setting in which there are several other members of staff and detainees – and places them in a very isolating environment. For children escorted by GEOAmeY to secure children’s homes and secure training centres, we understand this involves being placed in a

locked Citroën Picasso with three escort custody officers (one driver and two officers sitting on the rear seat with the child between them). Handcuffs may be used. There will be children in these situations who have had previous very traumatic experiences of being driven in locked vehicles with abusive adults. It is of utmost importance that children are made to feel as safe and secure as possible during this process.

16. Once placed in a secure children's home or secure training centre, children may be escorted for a number of reasons, including hospital appointments, court hearings and family funerals. The necessity of ensuring a calm and safe journey applies equally to these scenarios as to the first drive to a custodial institution.

### **Arguments for authorising the deliberate infliction of pain**

17. More than one-third of the restraint techniques in Minimising and Managing Physical Restraint (MMPR) have as their sole or primary purpose the deliberate infliction of pain.
18. We do not yet know the Government's rationale for authorising escort custody officers to use pain-inducing techniques during the escort of children detained in secure children's homes and secure training centres (potential age range: 10 to 17 years). We continue to believe the use of pain-inducing restraint in this context, with this group of children, would amount to a breach of a child's rights under Articles 3 and 8 of the European Convention on Human Rights and would be unlawful.
19. We have found it impossible to construct scenarios where a child can (must) be managed safely throughout their time in a secure children's home without pain-inducing restraint, but cannot be escorted in a specially adapted vehicle, with three officers, without the use of pain.

### **Independent review of restraint, 2007-08**

20. We assume the policy of authorising escort contractors to deliberately inflict pain on children during restraint is based upon the independent review of restraint in juvenile secure settings, which concluded that:  
  
*"There is a case for pain compliance, properly managed, as an alternative to prolonged use of non-compliant restraints that can cause danger to young people".<sup>7</sup>*
21. Two former directors of social services, Peter Smallridge and Andrew Williamson, were commissioned to review Control and Restraint (C&R), then used in all adult and juvenile prisons, and Physical Control in Care (PCC), which was then used in all secure training centres.
22. The deliberate infliction of pain is central to C&R, which was first introduced in child and adult prisons in 1983. PCC included three controversial pain-inducing techniques – the nose, thumb and rib 'distractions' – adapted from similar techniques in C&R.

23. Smallridge and Williamson consulted children in each custodial institution they visited. They observed in their first report that:

*We speak in this review of 'restraint' but this is not a word young people use. They speak of being 'twisted up', 'ragged up', 'bent up', 'wrapped up' and 'jumped on', and, when restrained to their bedrooms, of being 'taken to their pad' or 'put behind their door'.<sup>8</sup>*

24. Many distressing accounts of children being restrained are included in the report. These graphically convey the psychological as well as the physical harm. Smallridge and Williamson sum up:

*[Children] described the intense pain of wrists being bent as though their bones were about to break, of shooting pains and numbness, of breathlessness from frontal holds on the floor and facial friction burns and of being held in head locks by staff. Bruises can last for days if not weeks and experiences of pain in joints the day after being restrained was not uncommon.<sup>9</sup>*

25. More than 40 organisations and individuals contributed evidence to the review. On the matter of deliberately inflicting pain during restraint, Smallridge and Williamson explain:

*Almost all submissions to the review passionately argued against the use of any pain in restraint except in life-threatening situations. They supported the abolition of any restraint method which deliberately inflicted pain, including distraction techniques.<sup>10</sup>*  
*[Our emphasis].<sup>11</sup>*

26. The Prisons and Probation Ombudsman was cited by Smallridge and Williamson as believing that “*pain compliant methods could be an alternative to protracted use of non-compliant restraints that cause greater distress*”. The only other citation in support of the use of pain-compliance was a reference to the restraint death of David ‘Rocky’ Bennett in a medium mental health secure unit, and the view of Dr Brodie Paterson that eschewing pain-inducing restraint may prolong incidents.<sup>12</sup> Smallridge and Williamson omitted to indicate that the inquiry panel into David Bennett’s death repudiated the use of pain-inducing restraint.<sup>13</sup> Nor did they explain that David Bennett died following protracted restraint – he was held face down for 25 minutes – after a painful thumb lock was used.

27. Smallridge and Williamson did not cite any research or other evidence demonstrating that pain-induction is, in practice, the sole or principal means of staff quickly resolving grave situations involving children. Their point that “pain-related C&R may also have a deterrent effect”<sup>14</sup> especially lacks credibility. If pain-infliction can be legally justified only in grave situations, then by definition these are scenarios when a child has lost control and is not thinking or behaving rationally. Corporal punishment has been prohibited in prisons since 1967.<sup>15</sup>

28. Smallridge and Williamson make no mention of the NICE<sup>16</sup> Guidelines (2005) on managing violent and disturbed behavior in psychiatric settings, which were introduced following the death of David ‘Rocky’ Bennett. Applying to the care of people over the age of 16, the Guidelines stated:

*Every effort should be made to utilise skills and techniques that do not use the deliberate application of pain.*

*The deliberate application of pain has no therapeutic value and could only be justified for the immediate rescue of staff, service users and/or others.<sup>17</sup>*

29. NICE updated its guidance in 2015. This now incorporates the care of children of all ages. It includes an explicit prohibition of pain infliction during restraint – see below.

### **Safety arguments against the use of pain-inducing restraint**

#### ***Evidence to Smallridge and Williamson, 2007-08***

30. Smallridge and Williamson’s 2008 review cited the following arguments against pain-inducing restraint. We fully endorse all of these points:
- a. It violates children’s right to protection from inhuman and degrading treatment (Article 3, European Convention on Human Rights and Article 37, UN Convention on the Rights of the Child)
  - b. Children themselves “are clear that restraint should not use pain, either deliberately or accidentally inflicted”
  - c. Pain-inducing techniques “humiliate, subjugate and de-humanise” children
  - d. The infliction of pain increases the power staff have over children and therefore “increases the possibility of abuse”
  - e. It “reduces the chance of building up a therapeutic relationship within an establishment”
  - f. It reinforces “the cycle of violence that too many young people have known all their lives and undermines work to help them develop positive behaviours”
  - g. “It can be seen as reinforcing a culture based on intimidation and fear”, with “[t]he very fear of pain [causing] psychological distress, without it even being applied”
  - h. The risk of “pain thresholds [being] increased when young people are aroused, stressed and angry, leading to the overuse of pain pressure to achieve an effect”.<sup>18</sup>

## *Human rights considerations*

31. At the time of the review, the English and Welsh Children’s Commissioners and parliament’s Joint Committee on Human Rights had urged the discontinuation of pain-inducing restraint. A number of other human rights bodies have since opposed the methods, as follows:

<b>2009</b>	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended the UK “discontinue the use in juvenile establishments of manual restraint based upon pain compliant methods” <sup>19</sup>
<b>2012</b>	Her Majesty’s Inspectorate of Prisons issued its revised inspection criteria for juvenile prisons. This included the expectation that “pain infliction is not applied” <sup>20</sup>
<b>2013</b>	The UN Committee Against Torture recommended the UK “ban the use of any technique designed to inflict pain on children” <sup>21</sup>  The National Preventive Mechanism, charged with preventing torture in places of detention, told the UK Government: “The use of pain to secure compliance is unacceptable” <sup>22</sup>
<b>2015</b>	The four UK Children’s Commissioners, in their submission to the UN Committee on the Rights of the Child, stated: “pain should never be deliberately inflicted in order to restrain a child” <sup>23</sup>  Her Majesty’s Inspectorate of Prisons published its review of MMRP and reiterated its view that that “pain-inducing techniques should not be used on children” <sup>24</sup>
<b>2016</b>	The UN Committee on the Rights of the Child urged the UK to “ban the use of any technique designed to inflict pain on children”. <sup>25</sup>

## *Children and young people's testimony*

32. Research into children's experiences has consistently indicated that pain-inducing restraint is inherently dangerous and risks serious breaches of children's right to protection from inhuman and degrading treatment. One child told the National Children's Bureau:

*They don't know when to stop – I've got a scar on my arm. [During a restraint] I called him a prick. He said 'Every time you talk like that, I can give you pain' - he twisted my arm up. It was basically torture.<sup>26</sup>*

33. A girl told Smallridge and Williamson:

*I kicked off a bit in Maths and got PCC'd. They smacked my head down and I started crying. They said 'if we have to do this again, it'll hurt twice as bad, it'll really be painful'.<sup>27</sup>*

34. Young people told the NSPCC:

*Afterwards you have sore arms and wrists, throbbing and can't move them, like when your arms are dead with pins and needles.*

*In [name of institution] the officers want to fight you – if they have the opportunity they come in packs, all the biggest gobs from the gym come, they proper throw their knees into your back.*

*It makes me angry and I cry.*

*You'll push the emergency bell, wind up others, feel shitty – you've nothing left to lose so you might as well keep going.<sup>28</sup>*

35. Young people told User Voice:

*I said loosen it because I was in so much pain, and they said no, I'm going to use the force.*

*It made me feel scared like I was going to be hurt again. I panic when people touch me, it reminds me of when I was raped.*

*I was restrained on my first day here and had cuts on my hand from it and they left me all night in the cold and asked if I wanted a doggy blanket.<sup>29</sup>*

36. More recently, during a review of MMPR, children told Her Majesty's Inspectorate of Prisons:



*Yes [the restraint was painful], the fact that my arms were behind my back and my head was down. I was asking staff to loosen their hold on my arm several times but they didn't, not the tiniest bit.*

*I never tell staff that they are hurting me because I don't want them to know what hurts me ... Then they will just use it again another time to hurt me if they know where to hurt you.*

*One member of staff grabbed my neck and then others pushed me to the ground and held me there telling me to calm down. While I was on the floor a male member of staff was holding my head almost between his knees. I have been sexually abused in the past so you can imagine how that made me feel. I was terrified.<sup>30</sup>*

### **Children's continuing complaints about restraint**

37. Article 39 recently published research into allegations against adults working in institutional settings, including custody.<sup>31</sup> We found that one local authority had received 82 allegations against staff working in a juvenile young offender institution over a three-year period but judged none of them to be substantiated.
38. We are deeply concerned that children's complaints of abusive restraint within custodial settings may be going unheard. We fear pain-infliction during restraint may be a common feature of children's complaints. We are aware that the majority of referrals to local authorities concern the use of restraint:

<b>Wetherby</b> juvenile young offender institution (inspection undertaken in March 2017) – there had been 40 referrals to the local authority in the preceding six months, with most allegations relating “to the use of force by staff which, in the most serious cases, had led to police investigations”. Inspectors were “made aware of a very concerning incident of alleged abuse during use of force that was subject to police investigation”. <sup>32</sup>
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<b>Werrington</b> juvenile young offender institution (inspection undertaken in February 2017) – there had been 16 child protection referrals to the local authority in the preceding six months, most “related to the use of force by staff”. <sup>33</sup>
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<b>Feltham</b> juvenile young offender institution (inspection undertaken in January/February 2017) – there had been 19 child protection referrals to the local authority in the preceding six months, of which the “majority continued to relate to the use of force by staff”. <sup>34</sup>
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<b>Cookham Wood</b> juvenile young offender institution (inspection undertaken in September 2016) – there had been 26 referrals to the local authority of “allegations of excessive force by staff against a boy during a physical restraint” in the preceding six months. Two restraint injuries suffered by children had been recorded in the past six months, one a suspected broken arm. <sup>35</sup>
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### **Health, education and social care settings**

39. In addition to the consensus among human rights organisations, the Department of Health and the Department for Education do not permit the use of pain-inducing restraint on children. The Department of Health told Smallridge and Williamson:

*DH believes that children and young people displaying challenging and difficult behaviour can be successfully managed without the use of restraints or methods involving pain compliance, which would be in line with the management of aggression and violence across healthcare settings.*<sup>36</sup>

40. The Department for Education has prohibited the use of pain-inducing restraint in children's homes, including secure children's homes, since 2011. Current statutory guidance states:

*Restraint that deliberately inflicts pain cannot be proportionate and should never be used on children in children's homes.*<sup>37</sup>

41. As noted above, in 2015 NICE issued its revised clinical guidance on responding to violence and aggression from children and adults in mental health, health and community settings. The introduction explains:

*Although the quality of research in this field is variable, the methodology used here reflects current international understanding on the appropriate practice for guideline development..., ensuring the collection and selection of the best research evidence available and the systematic generation of treatment recommendations applicable to the majority of people with mental health problems whose behaviour is violent or aggressive.*<sup>38</sup>

42. The guidance advises:

*Do not use restrictive interventions to punish, inflict pain, suffering or humiliation, or establish dominance.*<sup>39</sup>

43. This is similar to the requirement within the Mental Health Act 1983's Code of Practice:

*Restrictive interventions should not be used to punish or for the sole intention of inflicting pain, suffering or humiliation.*<sup>40</sup>

44. At the end of November 2017, draft non-statutory guidance from the Department of Health and Department for Education was published in respect of health, education and social care settings caring for disabled children. One of its key principles is that:

*Restraint should not be used to punish or with the intention of inflicting pain, suffering or humiliation.*<sup>41</sup>

45. We are aware of the small review undertaken by Caring Solutions Ltd and the University of Central Lancashire for the Youth Justice Board, into international evidence and practice on non-pain inducing techniques and systems of restraint. This piece of work arose from one of the recommendations of the Restraint Advisory Board in 2011:

*The RMB [Restraint Management Board] should commission research into the feasibility of developing a restraint system which does not incorporate pain induction techniques. The research should include assessing the applicability of restraint systems used in other sectors (within and outwith childcare) that do not rely upon or permit pain induction.*<sup>42</sup>

46. Although the review was published in 2016, there is no reference to the NICE revised clinical guidance. The 14-page report concludes that:

*...although non-pain restraint techniques were in use in various settings around the world, it was very difficult to identify approaches based on good quality, quantified impact research.*<sup>43</sup>

47. We hope the Ministry of Justice will agree with us that this limited review is not persuasive, set against the very large number of institutions in this country alone which manage to care for children without using pain-inducing restraint. It is perhaps instructive that the 87 search terms used in the review, in order to find suitable studies, omitted to include key words like: 'care', 'look after', 'child protection', 'positive behaviour', 'negotiation', 'pedagogy', 'role model', 'institutional abuse' and 'child's voice'.

### ***Risk of corrosive cultures***

48. Article 39 strongly concurs with the former Chief Inspector of Prisons, when he warned of the cultural dangers of allowing staff to deliberately hurt children:

*The [Medway Improvement Board] is also concerned about the use of pain compliant holds that involve bending and/or rotation of the wrist and the deliberate application of pain. Smallridge and Williamson were persuaded that pain compliance was sometimes necessary to bring an end to extreme expressions of violence that would otherwise have necessitated prolonged physical restraints.*

*The Board feels if such measures are necessary they should be used rarely and only in exceptional circumstances. The Board is aware that some children, particularly those with Autistic Spectrum Disorders, do not respond to pain in the same way that other children do, which might increase the risk of injury or emotional abuse.*

*In addition, Nick Hardwick [the former Chief Inspector of Prisons] expressed concern about what the routine use of pain compliance was likely to have on the culture within the organisation. There were some shocking scenes in the Panorama programme that depicted staff boasting about hurting children. The Board feels that this may also increase the risk of staff seeking out places where there are no CCTV cameras in order to 'discipline' children.*<sup>44</sup> [Our emphasis].

49. We are deeply concerned that authority figures deliberately using pain to control children is communicating to them that 'might is right' and violence is legitimate;

indeed, that this is a Government-endorsed way of behaving. With the terrible history of abuse in custodial (and other) settings, this is damaging and dangerous. Adam Rickwood's letter to his solicitor gives a painful glimpse of how powerless and defeated he was after questioning why officers hit him in the nose, and being told this was permissible restraint.

50. Although GEOAmev reports that its escort custody officers have not used pain-inducing restraint techniques on children, the authorisation of such practices means children's human rights are in a constant state of threat. The policy of pain-inducing restraint contradicts the recommendations of international and European anti-torture and human rights bodies, other government departments and the prisons inspectorate. This is unacceptable.
51. Like staff working within institutions, GEOAmev escort custody officers are empowered to "step outside of the approved method of restraint (MMPR) to act in self-defence or in circumstances where an urgent and immediate threat to life justifies the use of alternative forms of restrictive physical intervention".<sup>45</sup> These are the extremely grave and very rare scenarios where deliberately hurting a person could be legally (and ethically) defended. There is no justification for maintaining regular restraint techniques which cause psychological and physical harm to children.
52. The Ministry of Justice will be aware that the 'nose distraction' was discontinued as a restraint technique in secure training centres in 2007 but remained authorised in juvenile young offender institutions (where it was called the 'nose control'). It was only removed from juvenile young offender institutions when officers were authorised to use the mandibular angle technique instead. This is one of the MMPR pain-inducing techniques.
53. The National Tactical Response Group (NTRG), the elite team sent in to deal with prison disturbances, was responsible for developing the MMPR techniques. Mandibular angle was "to be at the top level of pain-compliant techniques". NTRG argued the mandibular angle technique would be more appropriate than the nose control because it would be: safer for children; easier to apply; and easier to control the amount of pain. The panel of medical experts who assessed the technique gave "provisional endorsement" which was "conditional on legal advice to the effect that use of pain-inducing technique for restraint is lawful in England and Wales".<sup>46</sup>
54. We await confirmation from the Ministry of Justice that legal advice was obtained, and note the recent correspondence from the Treasury Solicitor that "no legal advice has been obtained specifically" in respect of the mandibular angle technique.
55. During 2015/16, officers recorded using the mandibular angle 72 times in just three juvenile young offender institutions. It was apparently not used at all in secure training centres. The 2015/16 statistics for use of restraint indicate there were no instances of pain-inducing restraint in secure training centres. The same applies to 2014/15.<sup>47</sup>

56. Some caution should be attached to this reporting – the BBC Panorama programme on Medway secure training centre showed at least one child – 14 year-old ‘Billy’ – being subject to pain-inducing restraint.
57. However, these latest statistics clearly show a very dramatic change in the infliction of deliberate pain. During a single year in 2004/05, the nose, rib and thumb ‘distractions’ were used 768 times in four secure training centres. These were once institutions which used pain-infliction as a matter of course, including to make children follow orders – which was unlawful and a serious breach of children’s human rights.
58. From a historical perspective, we would argue that the systemic use of pain-infliction in secure training centres arose from a management and monitoring culture which did not question or challenge the appropriateness of applying prison control techniques to vulnerable children. Ministers and officials, we believe, too readily accepted prison practices that in any other settings would be deemed professionally intolerable. That began to change (albeit at times imperceptibly) after the deaths of Gareth Myatt and Adam Rickwood, and because of the years of scrutiny and challenge which followed.
59. The Ministry of Justice will be aware that the routine strip-searching of children – during admission, discharge, cell searches, transfer to segregation and hospital and family visits – was strongly defended for several years after the same practices were stopped in women’s prisons. Like the movement away from systemic pain-infliction in secure training centres, once the policy of routine strip-searching was changed the institutions adapted.
60. That the Ministry of Justice is considering prohibiting pain-infliction during the escorts of children detained in secure children’s homes and secure training centres signals a welcome departure from the past. We commend this.

## Conclusion

61. The deliberate infliction of pain on children causes severe mental and physical harm.
62. It could only ever be legally justified in very extreme life-threatening situations, where no alternative approach was feasible. It has no place as a regular method of restraint. The Department for Education has prohibited its use within secure children’s homes because it “cannot be proportionate”. We agree with this assessment.
63. Training escort custody officers to use such methods risks contaminating their relationships with children, and gives absolutely the wrong message about how they should conduct themselves and the likely behaviour of children.
64. Deliberately hurting children as a form of restraint has no professional credibility. It is the reverse of child-centred.

65. Children are taught from an early age not to get into strangers' vehicles. The escorting experience, where a child has no choice but to travel alone with adults they do not know, in a locked vehicle, possibly in handcuffs, has the potential to be uniquely frightening.
66. Were escort custody officers to use (or threaten to use) a pain-induction technique in breach of the law and policy, there are no independent witnesses for the child. The experience could prove to be deeply traumatic. It could diminish the child's confidence and propensity to ask for help once in custody. This has serious child protection implications.
67. The evidence from other settings, and from the GEOAmev escorting service itself, shows that children can be safely escorted to/from secure children's homes and secure training centres without the threat or use of pain-infliction. The policy cannot be justified.
68. We would welcome the opportunity for a meeting with the Ministry of Justice to discuss this critical area of policy and practice.

**Article 39**  
**14 December 2017**

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<sup>1</sup> Our lawyers continue to progress the other matters set out in our 1<sup>st</sup> August 2017 letter.

<sup>2</sup> Prisons and Probation Ombudsman (2006) Circumstances surrounding the death of a boy at Hassockfield Secure Training Centre on 8 August 2004.

<sup>3</sup> INQUEST press release, 27 January 2011: youth justice agencies condemned for unlawful treatment of vulnerable boy in custody.

<sup>4</sup> Taylor, C. (December 2016) Review of the youth justice system in England and Wales. Ministry of Justice: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/577103/youth-justice-review-final-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf)

<sup>5</sup> Medway Improvement Board (March 2016) Final report of the Board's advice to Secretary of State for Justice: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/523167/medway-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523167/medway-report.pdf)

<sup>6</sup> All data is taken from: Youth Justice Board / Ministry of Justice (2017) Key characteristics of admissions to youth custody April 2014 to March 2016, England and Wales: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf)

<sup>7</sup> Smallridge, P. and Williamson, A. (2008) Independent review of restraint in juvenile secure settings. Ministry of Justice and Department for Children, Schools and Families, page 32.

<sup>8</sup> *ibid*, page 15.

<sup>9</sup> *ibid*, pages 15-16.

<sup>10</sup> *ibid*, page 40.

<sup>11</sup> *Ibid*.

<sup>12</sup> *ibid*, page 42.

<sup>13</sup> Independent Inquiry into the death of David Bennett, December 2003. The inquiry report states: "The Panel formed a firm view that it was not appropriate to inflict deliberate pain during any form of restraint of a patient, whatever the circumstances might be. Any patient who required physical restraint was by definition in a medical emergency".

<sup>14</sup> Smallridge, P. and Williamson, A. (2008) Independent review of restraint in juvenile secure settings. Ministry of Justice and Department for Children, Schools and Families, page 29.

<sup>15</sup> Section 65, Criminal Justice Act 1967.

<sup>16</sup> The National Institute for Health and Care Excellence.

<sup>17</sup> NICE (2005) Clinical practice guidelines for violence: The short-term management of disturbed/ violent behaviour in psychiatric in-patient settings and emergency departments, page 198.

<sup>18</sup> Smallridge, P. and Williamson, A. (2008) Independent review of restraint in juvenile secure settings. Ministry of Justice and Department for Children, Schools and Families, pages 41-42.

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- <sup>31</sup> Article 39 (November 2017) Abuse in children's institutional settings: How much is known?
- <sup>32</sup> Her Majesty's Inspectorate of Prisons (September 2017) Report on an unannounced inspection of HMYOI Wetherby and Keppel, 13–24 March 2017: [www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2017/09/Wetherby-Keppel-Web-2017.pdf](http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2017/09/Wetherby-Keppel-Web-2017.pdf)
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- <sup>44</sup> Ibid, page 49.
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