



FIGHTING FOR
CHILDREN'S RIGHTS
IN INSTITUTIONAL SETTINGS

The UK's compliance with the United Nations Convention on the Rights of the Child

Submission to the Committee on the Rights of the Child, July 2015

Children deprived of their family environment

Introduction

1. Article 39 is a new charity established to promote and protect the rights of children living in institutional settings in England. Our founder ran the Children's Rights Alliance for England until 2012, and our trustees have extensive experience in law, child and youth participation, and advocacy and services for children in alternative care.
2. We estimate there are around 80,000 children living at any one time in children's homes, boarding schools, residential special schools, mental health inpatient units, prisons and immigration and military detention in England. Taking our name from Article 39 of the Convention on the Rights of the Child (CRC), our charity is principally concerned with those children in institutions who have been subject to abuse, neglect and/or other violations of their rights, before and after their placement in these establishments.
3. The Committee on the Rights of the Child made a number of recommendations pertaining to children in institutional settings in 2008. We use these recommendations as headings throughout the main body of our report (following the order in which they appear in the concluding observations). At the end of our report, we make 30 recommendations for realising children's CRC rights in institutional settings.
4. Article 39 is a member of the Children's Rights Alliance for England and we support its comprehensive report to the Committee.

GENERAL MEASURES

Children's Commissioner and complaints

5. We are pleased to report that the Children's Commissioner's functions and powers have been strengthened considerably. However, the Commissioner continues to be prohibited from investigating individual cases, except in connection with certain defined groups. This was criticised by the UK parliament's joint committee on human rights in its children's rights inquiry this year.¹ Even within the legal prescription, highly vulnerable groups of children have been excluded from the new remit, including those detained for mental health, criminal justice and immigration purposes.
6. Children's Commissioners in Northern Ireland and Wales have been empowered since their inception to investigate individual cases, without any legal restrictions, and the Scottish Commissioner for Children and Young People gained investigatory powers in 2014² (taking effect next year). The failure of the UK to ratify the CRC communications procedure optional protocol makes it even more urgent that England's Commissioner be granted wide discretion to investigate individual cases.
7. England's Commissioner is permitted to assist those children who were formerly able to make complaints to the Office of Children's Rights Director³, a statutory role deleted in 2014. The categories of children are: those attending a residential school or college; those living in accommodation registered with Ofsted (education and social care settings); those receiving social care services; and young people up to the age of 25 who were formerly in care.
8. The Office of Children's Rights Director was established in 2001 in the wake of widespread revelations of abuse in alternative care. When the legislation was introduced, the Minister at the time told parliament the role would serve, "*a crucial function in being the person who will always be there for anyone to turn to when they have concerns or suspicions about what might be happening in a children's home or in other services*".⁴ The Children's Rights Director developed a casework service, despite not being empowered to do this through legislation. In 2011/12, his Office received 450 requests for advice and help, 61% of which came directly from children and young people.⁵ Since this service has now transferred to the Children's Commissioner, Article 39 made a freedom of information request to elicit how many requests for advice and assistance the body received in 2014/15 from (or on behalf of) this constituency of children, and the number of children it assisted.
9. The Office of Children's Commissioner reported receiving 395 requests from children that would have been able previously to use the Children's Rights Director casework service; it provided advice and assistance to 294 children; and made 101 representations on behalf

¹ Joint Committee on Human Rights (2015) The UK's compliance with the UN Convention on the Rights of the Child, paragraph 75.

² Section 7, Commissioner for Children and Young People (Scotland) Act 2003, as amended by Section 5, Children and Young People (Scotland) Act 2014.

³ Section 2D, Children Act 2004, as amended by Section 108, Children and Families Act 2014.

⁴ House of Lords debate 13 December 1999, c 13.

⁵ Morgan, R. (2012) Young people's views on complaints and advocacy. Reported by the Children's Rights Director for England, Ofsted, page 28.

of children. It is too early to tell whether the casework service available to the prescribed groups has diminished since transferring to the Office of Children’s Commissioner. However, it would appear that, overall, the Office receives disproportionately fewer requests/enquiries than the Commissioners in Northern Ireland and Wales. These bodies receive 10 times more requests, despite serving a much smaller population of children. This could be linked to the legal limitations historically placed on England’s Commissioner.

Table 1: Requests for advice and assistance, UK Children’s Commissioners, 2013/14

Country	Number of requests/enquiries	Child population	Requests/enquiries as % of child population
England	895 (circa 500 not fitting within its statutory remit)	11.6 million	0.008%
Northern Ireland	403	433,161	0.093%
Wales	526	629,339	0.084%

Children’s rights awareness-raising

- Children’s homes are the only institutional settings required by law to publish information about how they protect children’s rights.⁶

GENERAL PRINCIPLES

Child deaths in custody

- Three more children have died in penal custody since the UK’s last examination by the Committee on the Rights of the Child, bringing the total number of children to die in custody since the UK signed the CRC to 33. Of the 16 boys who have died in custody since 2000, at least 11 (69%) were subject to full care orders at some point in their lives.⁷ Care orders are the highest form of statutory protection given to children.
- Ryan Clark, aged 17, was found hanging in his cell at 7.51am on 18 April 2011 whilst on remand at Wetherby young offender institution. Jake Hardy, also aged 17, was found hanging in his cell at Hindley young offender institution in Wigan at 11.45pm on 20 January 2012 whilst serving a six-month sentence for affray and assault. He was pronounced dead in hospital four days later. Alex Kelly, aged 15, was found unconscious in his cell at Cookham Wood young offender institution in Kent at approximately 8.30pm on 25 January 2012, and was pronounced dead in hospital the following evening. Alex was serving a 10-month custodial sentence for burglary and theft of a vehicle.
- All three boys were profoundly vulnerable, two had been looked after by local authorities from early childhood and the third had a statement of special educational needs and ADHD (Attention deficit hyperactivity disorder). They each struggled to cope within the prison environment and were punished for behaviour symptomatic of extreme child distress. Inquests and serious case reviews conducted after the children’s deaths raised a catalogue of failures by agencies within and outside the prisons. The independent Chair of

⁶ Schedule 1, Regulation 16, The Children’s Homes (England) Regulations 2015.

⁷ Youth Justice Board (2014) Deaths of children in custody: Action taken, lessons learnt, page 33.

Leeds Safeguarding Children Board told the inquest into the death of Ryan Clark, who was looked after from the age of 16 months, that the system failed him. For the last year of his life, this child had “no consistent professional responsible for him”.⁸

14. The coroner conducting the inquest into the death of Alex Kelly submitted a report to the Justice Secretary under her statutory duty to take action to prevent other deaths.⁹ This report states:

*“[Alex Kelly was] a child with complex unresolved emotional issues and undiagnosed mental health issues [but] prison staff misread his behaviour as obstructive rather than signs of distress or a means of communicating that he needed help... I am aware of the deaths of a number of other children in custody who similarly had not had forensic psychiatric assessments... **there is a risk that future deaths will occur unless action is taken [emphasis added]**”.*¹⁰

15. There has never been any public inquiry following a child’s death in custody, even when requested by an inquest coroner – as happened in respect of Joseph Scholes who died in scandalous conditions in a prison healthcare unit in 2002.
16. Given continuing grave concerns about the safety and welfare of children in custody, successive governments’ refusal to establish an independent inquiry into child deaths in custody stops lessons being learnt about child protection in these institutions.¹¹ It perpetuates a two-tier child protection system, since there is no doubt that inquiries would have been established had these children died in such appalling circumstances within their family homes.
17. When a child dies in custody, a number of investigations are held – the inquest, a serious case review established by the Local Safeguarding Children Board and a review by the Prisons and Probation Ombudsman. However, there is no statutory duty on the Secretary of State or any other named person to take remedial action when any of these processes conclude other children may be at significant risk of death or serious injury in a custodial institution.

Child deaths in other institutional settings

18. Government does not publish data on the deaths of children in institutional settings. Article 39 has analysed serious case reviews published between 2013 and 2015 and found that, in addition to the three boys who died in penal custody, seven children died in institutional settings between 2009 and 2013. Three children hanged themselves: an 11 year-old boy attending a residential school, a 14 year-old boy accommodated in a children’s home; and a 17 year-old girl in a mental health in-patient unit. A 17 year-old boy living in supported accommodation died after not taking his medication; and a 17 year-old

⁸ INQUEST press release, 28 January 2014, ‘Serious failures identified by jury at inquest into death of 17 year old Ryan Clark at HMYOI Wetherby’.

⁹ Paragraph 7, Schedule 7, Coroners and Justice Act 2009.

¹⁰ Israel, S., Channel 4 news report: 23 February 2015: “‘Could have been saved’”: failing the mentally ill in prison’ <http://www.channel4.com/news/mental-health-deaths-custody-detention-prisons-alex-kelly>

¹¹ The Harris Review, which reported on 1 July 2015, examined the prison deaths of 83 young adults and four of the 33 children who have died in penal custody: Lord Toby Harris (2015) Changing prisons, saving lives. Report of the independent review into self-inflicted deaths in custody of 18-24 year olds, Her Majesty’s Stationery Office.

girl died from a bedroom fire in her children's home (where she was the only child and was cared for by two members of staff). Two 17 year-old girls living in 'independent living' accommodation were murdered. All seven of these children were extremely vulnerable and reliant upon the state for care and protection. The frequency of restraint and sanctions was one of the background concerns of the serious case review into the youngest child to die, aged 11, in an institutional setting during this period. Publicity in respect of his death led to a member of the public alerting the Local Safeguarding Children Board to past allegations of abuse in the residential school.

CIVIL RIGHTS AND FREEDOMS

Restraint and injuries in custody

19. Custodial establishments are required to report to the Youth Justice Board a number of incidents that "involve highly sensitive issues" – including the death of a child; serious injury requiring "substantial medical treatment"; the refusal of food for three consecutive days (unless it is deemed to be life-threatening before this time); and deliberate self harm which is seen to be life-threatening and requires substantial medical treatment.¹² The Youth Justice Board's policy document refers to the possibility of Ministers being informed of such matters. However, there is no reference to establishments routinely reporting these grave incidents to the child's parents, his or her home local authority or to independent reviewing officers (assigned to looked after children). We recently obtained an internal government document on serious incidents occurring in penal custody, which shows a significant number of children suffering serious breathing difficulties during restraint. One child was kept "under restraint" as officers gave him his asthma inhaler: he vomited after taking the medication.
20. The Committee will be aware of the horrific death following restraint of 15 year-old Gareth Myatt in 2004. A mixed race child, Gareth had been looked after on five separate occasions and was very vulnerable, weighing around 41kg and standing just 1.5 metres tall. He was subjected to the 'seated double embrace' method of restraint (since withdrawn); officers in the G4S secure training centre ignored his cries that he couldn't breathe. The latest inspection report on this prison, published in May 2015, reveals children were subject to "degrading treatment" and racism. One child who had a fracture possibly caused by restraint was denied medical treatment for 15 hours. Another self-harmed after an officer did not follow his agreed care plan. Inspectors refer to "serious incidents of gross misconduct", including by managers.¹³
21. Since the Committee last examined the UK, the second inquest into the death of 14 year-old Adam Rickwood in a secure training centre confirmed he was subject to unlawful restraint and the Serco-run institution was operating an unlawful regime. The following year, in 2012, the High Court found all four secure training centres had been subjecting children to widespread unlawful restraint for at least a decade. In the absence of proactive action by the government, the Youth Justice Board and the multinationals running the

¹² Youth Justice Board (2009) Protocol for reporting serious & significant incidents.

¹³ Ofsted, Care Quality Commission and Her Majesty's Inspectorate of Prisons (May 2015) Inspection of secure training centres. Inspection of Rainsbrook secure training centre: February 2015.

secure training centres, and the extent of the abuse suffered by children, the Children's Rights Alliance for England (CRAE) sought a court order requiring the state to notify those individuals who may have been unlawfully restrained as child prisoners. Although the High Court judge did not make such an order, he observed:

*Merely because the action of disseminating the relevant information is not required by the law does not mean that there is no obligation to consider whether some action is necessary if only as a matter of good and fair administration. Given that those potentially affected were vulnerable children and young persons would, in my judgment, at least dictate the need for the [Government] to consider whether something ought to be done.*¹⁴

22. Successive governments have taken no action in response to the High Court's finding of widespread unlawful restraint in secure training centres, affecting potentially thousands of children. In October 2014, G4S, Serco and the Youth Justice Board paid £100,000 in compensation following legal action brought by 14 former child prisoners. The Youth Justice Board wrote a letter to the claimants stating, "The YJB would like to say sorry to any young person who was subjected to unlawful restraint in these circumstances".¹⁵ This apology was not released to the media and is not publicised on the Government's website.
23. CRAE's failed legal challenge highlights the barriers impeding access to justice for children living in institutional settings. These were children in prisons where unlawful restraint was entrenched and endemic. Many children suffered serious injuries and life-threatening harm. No professionals took action to protect them at the time. How could children have known what was being done to them was against the law? Even if they had realised they were being mistreated, would they have felt confident enough to make complaints – see paragraph 39 below. Were the UK to ratify the CRC communications procedure, this would give a vital additional safeguard to those too fearful of repercussions, since third parties are permitted to submit complaints on behalf of children.
24. Individual cases brought to the attention of the Prisons and Probation Ombudsman and the prisons inspectorate have highlighted many instances of children in young offender institutions being subject to extreme forms of restraint, and suffering broken bones and degrading treatment, in situations where the child was not fighting or being violent and the use of restraint was highly questionable. Concerns about restraint being used in areas of prisons without CCTV coverage has led the Youth Justice Board to consider funding body cameras for officers.

Pain infliction as a form of restraint

25. There has been no progress on the removal of pain infliction as a form of restraint in child prisons, despite the UN Committee Against Torture's recommendation in 2013 that the UK "ban the use of any technique designed to inflict pain on children".¹⁶ One-third of the restraint techniques in the new Minimising and Managing Physical Restraint (MMPR) system of restraint for child custody rely on the infliction of severe pain. Moreover, the rules governing restraint in young offender institutions have not been amended to

¹⁴ [2012] EWHC 8 (Admin) [199].

¹⁵ Bhatt Murphy Solicitors press release, dated 27/10/14, "YJB apologises to 14 children".

¹⁶ UN Committee Against Torture (2013) Concluding observations on the fifth periodic report of the United Kingdom, paragraph 28.

prohibit the use of restraint to maintain good order and discipline. Data published on the use of restraint in the different custodial settings does not indicate the reasons restraint was used, whether a nurse was present during the restraint and whether the child's version of events was recorded soon after. The coroner who undertook the inquest into the death of Gareth Myatt stressed the importance of eliciting the child's views.

Secrecy in restraint techniques

26. The MMPR manual has been published with 182 redactions; Article 39's Director has spent more than three years trying to force disclosure of the document under freedom of information legislation. Details of the previous system of restraint used in secure training centres and immigration detention were only released in 2010, after a similar freedom of information challenge. As well as there being continuing secrecy of the MMPR techniques, officials have refused to release information about personal safety techniques taught to officers working in child prisons.

Restraint and strip-searching

27. Prison staff are authorised to restrain children whilst they are being strip-searched. Data on the number of strip-searches undertaken whilst a child is held down by officers is not published by the government, though prisons inspectors consistently express concerns. For example, during an inspection in January 2015, inspectors found at least one child had been strip-searched under restraint yet this had not been recorded in the prison log and was not reported to safeguarding teams within the institution or the local authority. Strip-searching in the segregation block – the most invisible part of the prison – was not recorded.¹⁷

Oversight and legal approval

28. The Restraint Advisory Board, which conducted the independent assessment of the MMPR restraint techniques, was not invited to assess the methods used by private contractors on children during transportation. Furthermore, the Government has not given a clear assurance that it obtained legal advice confirming the lawfulness of methods of restraint that deliberately inflict pain – this was the condition imposed by medical practitioners when they gave temporary approval for the techniques to be used on children.

Secure colleges – threat to children's rights

29. In 2014, parliament passed legislation enabling the creation of a new type of prison for children aged 12 to 17. Government proposals for the first 'secure college' indicated 320 boys and girls would be detained together. The legislation empowers custody officers to use force to ensure good order and discipline, risking widespread breaches of children's right to protection from all forms of violence and inhuman and degrading treatment or punishment. The joint committee on human rights reiterated this year that these provisions "cannot be considered compatible with the UN Convention on the Rights of the

¹⁷ Her Majesty's Inspectorate of Prisons (June 2015) Report on an unannounced inspection of HMYOI Wetherby by HM Chief Inspector of Prisons 12 – 23 January 2015, page 26.

Child”.¹⁸

Serious injuries in custody

30. The current legislative framework only requires a serious case review when a child has been seriously harmed and there is cause for concern about how agencies have worked together to safeguard the child. This creates a very high hurdle for independent scrutiny of the failure of custodial establishments to safeguard and promote the welfare of children.¹⁹
31. The Youth Justice Board annually publishes data on injuries suffered by children in custody arising from self-harm, assault and restraint. In the five years since the Committee last examined the UK, the data shows there were 3,920 incidents where children were injured as a result of self-harm (1,471 incidents), assault (1,389) and restraint (1,060). This equates to an average of 15 incidents causing injuries in custody every week across the whole five-year period. The actual number of injuries is not published.
32. Table 2 below shows the majority of injuries occurred in young offender institutions. These prisons have the lowest officer to child ratio and share many of the characteristics of adult prisons. Children are typically locked in their cells for 16 hours a day, though many spend much longer periods ‘banged up’. The latest inspection report observes a “significant number” of boys in one prison had only one hour a day out of their cells; 30% of children were locked in their cells during ‘roll call’ in the middle of the day during the inspection visit.²⁰ One-third of the children held in this prison had been in care, 15% were disabled and 54% were being deprived of their liberty for the first time.²¹ In April 2015, 70% of the 999 children in custody were held in young offender institutions and 19% were held in secure training centres run by the global security company G4S. Only 11% of the children were in secure children’s homes²² – establishments governed by children’s legislation, run by local authorities and which have to have a social worker or other professionally qualified manager.

Table 2: Incidents leading to injury in child custody, 2009/10–2013/14

	Total number	YOIs*	STCs**	SCHs***
Self-harm incidents leading to injury	1,471	1,088 (74%)	139 (9%)	244 (17%)
Assault incidents leading to injury	1,389	917 (66%)	374 (27%)	98 (7%)
Restraint incidents leading to injury	1,060	631 (60%)	318 (30%)	111 (10%)

*Young offender institution

**Secure training centre

***Secure children’s home

¹⁸ Joint Committee on Human Rights (2015) The UK’s compliance with the UN Convention on the Rights of the Child, page 56.

¹⁹ Section 11, Children Act 2004.

²⁰ Her Majesty’s Inspectorate of Prisons (June 2015) Report on an unannounced inspection of HMYOI Wetherby by HM Chief Inspector of Prisons 12 – 23 January 2015, page 15.

²¹ Her Majesty’s Inspectorate of Prisons (June 2015) Report on an unannounced inspection of HMYOI Wetherby by HM Chief Inspector of Prisons 12 – 23 January 2015, page 99.

²² Ministry of Justice and Youth Justice Board (June 2015) Youth custody report, April 2015.

Restraint in other institutional settings

33. Besides custody, the Government does not publish information on the use of restraint in children’s institutional settings. Restraint has recently been categorised as a ‘patient safety incident’ in health settings but data about its use is not disaggregated between children and adults.²³ Furthermore, the Government continues to resist calls to ban the use of face-down restraint in mental health settings.²⁴

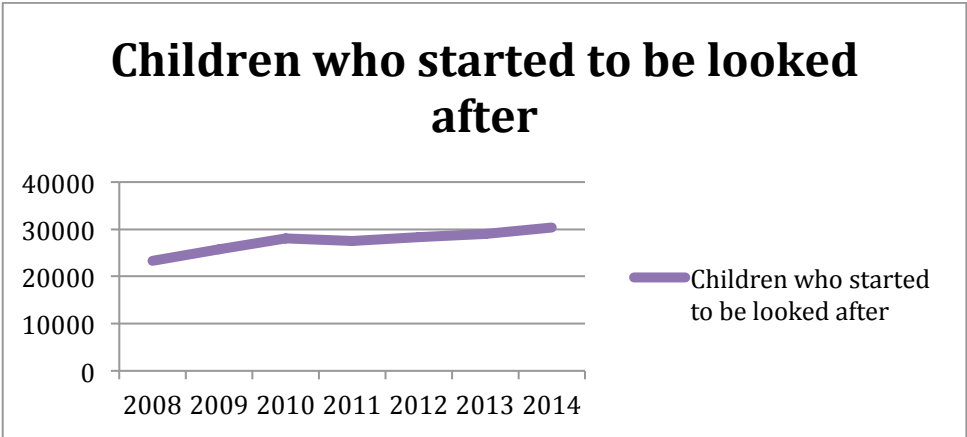
Corporal punishment and adopted children

34. The Committee will be aware that the legal defence of ‘reasonable punishment’ continues to be available to parents and others looking after children in contexts where there is no prohibition. In 2014, 5,050 children were adopted in England. All of these children were previously looked after and the law fully protected them from being hit by their carers. Through the process of adoption, these children lost this fundamental protection, since adoptive parents can, like other parents, rely on the legal defence.

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Increasing number of children entering care

35. The number of children entering care has steadily increased since the Committee last examined the UK in 2008. In 2008, 23,250 children entered the looked after system; by 2014, this had increased to 30,430 – nearly a third higher.



36. There has been sustained media coverage of child abuse in recent years, particularly focusing on high profile individuals and adults who were abused as children in institutions. This is believed to have affected the number of referrals to local authorities, together with a growth in the child population. Decreasing support to families is a major factor too. Government austerity has led to considerable retrenchment of child and family services, run by the statutory and voluntary sectors, as well as severe benefit cuts, particularly to disabled people. Latest official data shows 28% of UK children are living in relative poverty

²³ Health and Social Care Information Centre (2014) Measures from the mental health minimum dataset (MHMDS), England 2012-13 Physical restraint.
²⁴ Written answer to parliamentary question, 25 March 2015; Mind (2013) Mental health crisis care: physical restraint in crisis. A report on physical restraint in hospital settings in England, page 3.

(below 60% median income after housing costs). This increases to 42% of children who live with one or more disabled adults.²⁵ A UK-wide survey by the End Child Poverty Coalition (n=1,000) found that 20% of families with children had cut back on food and heating as a consequence of financial support to families not keeping up with living costs.²⁶

Material deprivation and alternative care

37. Government statistics show there were 150 children looked after²⁷ on 31 March 2014 principally because of their family's low income. The number of children entering care in 2014 because of low income was 30 – a three-fold increase on 2008.
38. Inspections of institutional settings do not report the economic and social backgrounds of children living there. However, it is known that:
 - a. Children attending special schools are more than twice as likely to be in receipt of free school meals – one of the main indicators of child poverty – than children generally (39% compared with 16%)²⁸
 - b. Children from unskilled manual backgrounds are more than five times as likely to be looked after than those with parents from professional backgrounds²⁹
 - c. Looked after children are 24 times more likely to be mental health in-patients than children in the wider population³⁰
 - d. The rate of material deprivation among children in custody is four times higher than in the general child population³¹
 - e. Three-quarters of children entering the British armed forces in 2015 had the literacy level of an 11 year-old or lower; 7% of these had the literacy level of a 5 year-old.³² (In the last three years, five children were detained in military detention)³³
 - f. 99% of those attending independent schools are from affluent backgrounds; and 1% relies on means-tested full scholarships³⁴ (14% of children attending independent schools are boarders).³⁵

Complaints and advocacy

39. Children and young people living away from home face many challenges in accessing advice and assistance when they are unhappy or unsafe. Fear of repercussions, lack of information, not expecting to be believed and systems being too complex are just some of the challenges. The Local Government Ombudsman and the Prisons and Probation Ombudsman have both reported this year that they continue to receive very few

²⁵ Department for Work and Pensions (June 2015) Households below average income: 1994/1995 to 2013/2014.

²⁶ End Child Poverty Coalition (2015) Short changed: the true cost of cuts to children's benefits.

²⁷ This is the term given to children who are cared for by local authorities, with the consent of their parents and/or through a court order.

²⁸ Department for Education (June 2015) Schools, pupils and their characteristics: January 2015. Table 3b.

²⁹ Cheesbrough, S. (2002) The educational attainment of people who have been in care: findings from the 1970 British Cohort Study, Social Exclusion Unit: London.

³⁰ O'Herlihy, A. et al (2002) National in-patient child and adolescent psychiatry study (NICAPS). Royal College of Psychiatrists' Research Unit, page 38.

³¹ Jacobson, J. et al (2010) Punishing Disadvantage a profile of children in custody. Prison Reform Trust, page 52.

³² Child Soldiers International (May 2015) Freedom of Information request on educational level of youngest army recruits

³³ [Written answer to parliamentary question, 26 January 2015.](#)

³⁴ Social Mobility and Child Poverty Commission (2014) Elitist Britain? Page 9.

³⁵ Independent Schools Council (2015) ISC census 2015, page 8.

complaints directly from children.³⁶ In 2012, the Office of the Children’s Rights Director (formerly based in Ofsted, now merged with the Office of Children’s Commissioner) consulted children in care, care leavers and those living in boarding schools. He found that just 35% of those who had made a complaint believed it had been dealt with fairly; and almost a quarter did not know the outcome of their complaint.³⁷ Last year, nearly one in 10 boys in young offender institutions reported to prisons inspectors they felt too scared and intimidated to make a complaint; this increased to 18% of disabled boys.³⁸

40. The law in relation to children’s access to independent advocates has developed in a piecemeal fashion, with no overall vision or national strategy for ensuring availability, quality and impact. It is the particular circumstances of children that entitle them to an advocate, not their fundamental right to be heard. This inevitably leaves many vulnerable children unprotected.
41. Children who wish to make a complaint about health services, and those who are detained under mental health legislation or being considered for electro-compulsory therapy, have the right in domestic law to an independent advocate. Looked after children have a statutory right to assistance from an independent advocate when they are considering making a representation (including a complaint) about social care services, and their care and progress is being reviewed. Sixteen and seventeen year-olds who lack mental capacity are also entitled to an advocate.³⁹ Although there is no statutory basis to this provision, the Youth Justice Board funds independent advocates in young offender institutions and secure training centres. Disabled children and their parents are entitled to independent advice, information and support in connection with education, health and social care services, which includes assisting children to participate in decisions and making complaints.⁴⁰
42. Independent advocates are not qualified lawyers. Recent legislation has severely curtailed children’s access to legal aid.⁴¹ For those living in institutional settings, removal of funding for legal representation in respect of education (unless this is related to special educational needs) and mistreatment in custody are particularly alarming. Furthermore, the Government introduced regulations restricting the right to judicial review, which would also affect children living in institutions. These regulations were quashed in a legal challenge in March 2015.⁴² The month before, legislation received Royal Assent that will make it harder for children’s rights NGOs to act as interveners in judicial review cases. Courts have been empowered to order that NGOs pay the costs of other parties where, for example, they “have not been of significant assistance to the court”.⁴³

³⁶ Local Government Ombudsman (March 2015) Are we getting the best from children’s social care complaints?; Prisons and Probation Ombudsman for England and Wales (March 2015) Learning from PPO investigations. Why do women and young people in custody not make formal complaints?

³⁷ Morgan, R. (2012) Young people’s views on complaints and advocacy. Reported by the Children’s Rights Director for England, page 15.

³⁸ Prime, R. (2015) Children in custody 2013–14. An analysis of 12–18-year-olds’ perceptions of their experience in secure training centres and young offender institutions, Her Majesty’s Inspectorate of Prisons and Youth Justice Board, pages 89 and 123.

³⁹ Willow, C. (2013) Independent advocacy in child protection. Guidance for policy makers. National Children’s Bureau, page 23.

⁴⁰ Section 32, Children and Families Act 2014; Department for Education (2014) Special educational needs and disability code of practice 0-25.

⁴¹ Legal Aid, Sentencing and Punishment of Offenders Act 2012.

⁴² [2015] EWHC 523 (Admin).

⁴³ Section 87, Criminal Justice and Courts Act 2015.

Miles from home and family contact

43. Legal safeguards relating to placement out of area were introduced in 2011 in respect of looked after children. The child's wishes and feelings must be given due consideration and the independent reviewing officer allocated to the child must be consulted.⁴⁴ In addition, the Department for Education requires local authorities to provide data on such placements in order to monitor the situation (17% of looked after children were placed more than 20 miles away on 31 March 2014⁴⁵).
44. The Department of Health has made a similar policy commitment to local provision for children who are admitted to mental health inpatient services.⁴⁶ This comes against a backdrop of most children being placed more than 25 miles from home and 16% being 100 miles from home.⁴⁷
45. The commitment to local provision does not extend to custody. Indeed, the Ministry of Justice's secure colleges plan will entrench the practice of placing vulnerable children tens and hundreds of miles from their homes and local communities. The Government has been explicit that costs savings are dependent upon younger, and more vulnerable children, being placed in the secure colleges.⁴⁸
46. The quantity and quality of family contact in penal custody is integrated into institutions' rewards and sanctions schemes, and the managers of these institutions have weaker statutory duties to promote and enable family contact than managers running secure children's homes. Secure colleges will be expected to entitle children to just one family visit a week, with the principal having discretion beyond this.⁴⁹ The same restrictions on adult prisoners hugging family members during visits are also imposed on child prisoners. Each of the three boys who died in custody since 2008 experienced difficulties with maintaining family contact, and bereavement and distress caused by lack of family contact punctuated the deaths of other children in custody.⁵⁰

Institutionalisation and disabled children

47. Disabled children are disproportionately placed in institutions – across education, health and custodial settings. When the Committee last examined the UK, it urged action to promote the inclusion of disabled children and to prevent institutionalisation. There has been no co-ordinated action by government to protect disabled children's right to family life, and funding cuts are making life harder for many families. We would ask the Committee to probe what the government has done to prevent disabled children living in institutional settings and how it monitors progress in this area.

⁴⁴ Regulation 11, The Care Planning, Placement and Case Review (England) Regulations 2010.

⁴⁵ Department for Education (2014) Children looked after in England, including adoption. Table A6: Children looked after at 31 March by distance between home and placement and locality of placement. Year ending 31 March 2014.

⁴⁶ Department of Health (2015) Future in mind. Promoting, protecting and improving our children and young people's mental health and wellbeing, page 12.

⁴⁷ NHS England (2014) Child and Adolescent Mental Health Services (CAMHS) Tier 4 report, page 84.

⁴⁸ Ministry of Justice (2014) Transforming youth custody. Impact assessment, page 3.

⁴⁹ Ministry of Justice (2014) Plans for secure college rules, page 13.

⁵⁰ See chapter 3 of Willow, C. (2015) Children behind bars. Why the abuse of child imprisonment must end. Policy Press.

SPECIAL MEASURES OF PROTECTION

Immigration detention as a last resort

48. An investigation by a national newspaper has revealed that 661 children were held in immigration detention between 2011 and 2014.⁵¹ During the first quarter of 2015, 41 children entered detention compared with 19 for the same period in 2014. Nearly half (47%) of the 43 children who left detention in the first quarter of 2015 were allowed to remain in the UK on a temporary or permanent basis,⁵² raising serious questions about the lawfulness of detaining them in the first place. There is still no legal limit to the length of time a child (or their parent) can be detained.

Age of criminal responsibility

49. England continues to charge and convict children from the age of 10 years. The age of criminal responsibility has a direct relationship with the number of children held in police and prison custody in two ways. First, if a child cannot legally enter the criminal justice system, he/she cannot be held in custody. Second, the younger a child is brought into contact with the criminal justice system the greater the chance of him/her travelling 'up tariff' and being given a custodial sentence during his/her childhood years.
50. The UK Government's report to the Committee on the Rights of the Child states the age of criminal responsibility has not been increased because:

*"The UK Government believes that children aged 10 are able to differentiate between bad behaviour and serious wrongdoing and it is right that they should be held to account for their actions."*⁵³

51. No explanation is given as to why primary school children cannot be held to account for their actions through other means than arrest and criminal prosecution.

Alternatives to detention

52. The substantial reduction in the number of first-time child entrants to the criminal justice system in recent years indicates greater compliance with article 37's requirement to make the arrest of children a measure of last resort as well as domestic law duties on local authorities to reduce the need for criminal proceedings being brought against children in their area.⁵⁴ However, this is no substitute for ministers deciding a) to use legislation to protect children from contact with the criminal justice system, and b) to concentrate their efforts on bolstering the capacity of families and child welfare services to promote and protect the rights of children.
53. Table 3 below indicates the age breakdown of children entering the criminal justice system for the first time in each of the last five years.

⁵¹ Owen, J., 08 January 2015, The Independent: Immigrant children still being detained, figures show.

⁵² Home Office (May 2015) Immigration statistics, January to March 2015.

⁵³ UK Government (2014) The fifth periodic report to the UN Committee on the Rights of the Child. United Kingdom, page 55.

⁵⁴ Paragraph 7, Schedule 2, Children Act 1989.

Table 3: Age of first-time child entrants to criminal justice system, 2009/10–2013/14

Age	Total	2009/10	2010/11	2011/12	2012/13	2013/14
10-12	17,697	6,762	4,252	3,049	2,184	1,450
13	20,206	7,218	4,771	3,540	2,664	2,013
14	31,785	10,751	7,490	5,859	4,350	3,335
15	40,110	12,961	9,337	7,337	5,893	4,582
16	41,809	12,388	9,873	8,128	6,153	5,267
17	44,299	12,484	10,245	9,009	6,814	5,747
Total	195,906	62,564	45,968	36,922	28,058	22,394

54. Numbers of children in custody have decreased since the UK’s last examination by the Committee in 2008. Several inter-related factors can be attributed to the reduction in the use of child custody across this period, including a dramatic decrease in the number of children appearing before the courts and a relatively quiet political atmosphere surrounding child offending.⁵⁵ It is reasonable to presuppose that the custody scandals of the past decade have also increased the degree of caution among sentencers and those working with children appearing in courts. The dangers of child custody have become even more apparent. With the demise of so many juvenile young offender institutions, it is unquestionable that far fewer children are being placed in damaging environments than was the case in 2008/09. However:

- a. The UK still locks up more children than we did when we ratified the CRC. The average population in young offender institutions in 2013/14 was 144% higher than in 1991 (825 children compared with 572⁵⁶)
- b. Our country continues to operate far outside European norms in the use of child penal incarceration. Only two of 47 Council of Europe member states, Russia and Turkey, detained more children than the UK in September 2013, the latest date for which Council of Europe figures are available⁵⁷
- c. One in five (21%) of children in custody were held on remand in 2013/14. Of these, 25% were subsequently acquitted and another 37% were given a non-custodial disposal.⁵⁸ In human terms, this was 1,272 children sent to custody for offences they were either found innocent of, or for which a non-custodial sanction was deemed most appropriate – in a single year
- d. Ministers have failed to introduce a custody safeguard that would ensure children could be only given a sentence of custody as a measure of last resort, as recommended by the Committee in 2008
- e. The substantial disinvestment in secure children’s homes will make it more difficult (though not impossible) for future policymakers to reject imprisonment in favour of care and containment that is compliant with the CRC and other international standards. More than a decade has passed since the inquest jury considering the death in 2002 of 16 year-old Joseph Scholes in a Shropshire young offender institution asked: “Perhaps more money could be put into building more secure units”.⁵⁹

⁵⁵ See Allen, R. (2011) Last resort? Exploring the reduction in child imprisonment 2008-11. Prison Reform Trust.

⁵⁶ Utting, W. (1991) Children in the public care. A review of residential child care. HMSO, page 40.

⁵⁷ Aebi, M. F. et al (2014) Council of Europe annual penal statistics. Space I survey 2013. Strasbourg: Council of Europe, pages 68-69.

⁵⁸ Ministry of Justice and Youth Justice Board for England and Wales (2015) Youth Justice statistics. Table 6.5: Outcomes for young people on custodial remand, 2009/10 to 2013/14.

⁵⁹ [2006] EWCA Civ 1343 [32].

Children in custody not separated from adults

55. The prisons inspectorate repeatedly raises concerns about children being transported with adults to custody.⁶⁰ This breaches domestic legislation⁶¹ and article 37c CRC. Child prisoners are held in segregation alongside adults in at least one young offender institution.⁶²
56. Children continue to be admitted to adult mental health wards, including under compulsory (detention) measures. During 2012/13, 236 children were admitted to adult wards; 29 of these children were aged under 16.⁶³ This is despite changes to legislation in 2007 requiring mental health hospital placements to be age appropriate.⁶⁴
57. Children continue to be occasionally detained in the Military Corrective Training Centre in Colchester, which also detains adults from the armed forces.

Statutory right to education

58. Children in custody have extremely poor educational histories prior to detention, and a significant proportion have learning difficulties. Latest data shows 88% of children held in young offender institutions were excluded from school, and 38% were 14 years or younger when they last attended school.⁶⁵ The Apprenticeships, Skills, Children and Learning Act 2009 placed a legal duty on local authorities to ensure “enough suitable education is provided to meet the reasonable needs” of children in custody.⁶⁶ The duty came into force in September 2010 yet, by 2013, the Government announced, “Frequently, young people do not get the required hours of education”.⁶⁷ Young offender institutions were due to start providing 30 hours education a week from March 2015.⁶⁸ No minimum requirements for children’s education were enshrined in the primary legislation establishing secure colleges, and the statutory functions of the ‘principal’ are tied to the Prison Act 1952 rather than to education or child welfare legislation.⁶⁹

Child victims of crime

59. There has been a great deal of political and media focus on institutional child abuse in England since the Committee last examined the UK. The scale of past abuse appears to be incredibly high. Article 39 asked every local authority in England whether they are

⁶⁰ See, for example: Her Majesty’s Inspectorate of Prisons (2015) Report on an unannounced inspection of HMYOI Werrington by HM Chief Inspector of Prisons, 1 – 12 September 2014, page 19; Her Majesty’s Inspectorate of Prisons (2014) Report on an unannounced inspection of HMYOI Cookham Wood by HM Chief Inspector of Prisons, 9 – 20 June 2014, page 19; Her Majesty’s Inspectorate of Prisons (2014) Report on an unannounced inspection of HMYOI Hindley by HM Chief Inspector of Prisons, 3 – 14 March 2014, page 21; and Her Majesty’s Inspectorate of Prisons (2014) Report on an unannounced inspection of HMP & YOI Wetherby by HM Chief Inspector of Prisons, 7 – 18 October 2013, page 19.

⁶¹ Section 31, Children Act 1933.

⁶² Her Majesty’s Inspectorate of Prisons (2013) Report on an unannounced inspection of HMP/YOI Feltham (Feltham A – children and young people), 21 – 25 January 2013, by HM Chief Inspector of Prisons, page 31.

⁶³ Health and Social Care Information Centre (March 2014) Monthly Mental Health Minimum Data Set (MHMDS) Reports, England - Final November 2013 summary statistics and related information.

⁶⁴ Section 31, Mental Health Act 2007.

⁶⁵ HM Inspectorate of Prisons and Youth Justice Board (2014) Children in custody 2013–14. An analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions. Appendices: Young offender institutions.

⁶⁶ Section 48, which inserts new Section 18A into the Education Act 1996.

⁶⁷ Ministry of Justice (2013) Transforming youth custody. Putting education at the heart of detention. Consultation paper.

⁶⁸ Ministry of Justice press release, 15 December 2014, 30 hours education a week for young offenders.

⁶⁹ See Schedule 10, Criminal Justice and Courts Act 2015.

investigating, or are aware of police investigating, institutional child abuse occurring in their residential establishments in the past (at least 12 months ago). Almost one-quarter (24%) of local authorities that answered this question (n=75) said investigations are occurring in their area. The Home Office has established a statutory inquiry into institutional child sexual abuse, chaired by Justice Lowell Goddard from New Zealand. This is expected to take several years before it concludes. Many police operations are continuing, and the Crown Prosecution Service has decided to bring to trial the allegations against the House of Lords Peer, Greville Janner. The Government has also established a high-level Ministerial Child Protection Taskforce.

60. Article 39 welcomes all of these developments. However, we are very concerned at the absence of robust policy responses to ensure children living in institutional settings today are adequately safeguarded. Research undertaken for the National Society for the Prevention of Cruelty to Children found that at least 3.3 out of every 100 children in residential care is subject to abuse.⁷⁰ Article 39's own research into allegations of abuse and neglect made by children, and the extent to which these are investigated, points to children in institutional settings receiving a second-rate child protection service compared with their peers living in family settings.
61. Our recommendations below are aimed at ensuring the rights of children living in institutional settings are much better protected, focusing especially on their right to be safe from all forms of violence and degrading treatment.

RECOMMENDATION 1: The Children's Commissioner should be empowered by law to investigate individual cases when these have wider significance for the rights of children.

RECOMMENDATION 2: The Children's Commissioner should include in her statutory annual report information about the nature of requests from individual children for advice and assistance; a synopsis of the children she was and was not able to help; and the outcomes of her Office's interventions and representations.

RECOMMENDATION 3: All institutional settings should be required by law to make children aware of their rights under domestic and international law.

RECOMMENDATION 4: An independent, statutory inquiry should be established into the deaths of children in penal custody.

RECOMMENDATION 5: Government should notify parliament on an annual basis of the deaths of children occurring in institutional settings, whether these deaths could have been prevented and what action Ministers are taking to strengthen the support and protection offered to children in future.

RECOMMENDATION 6: Agencies undertaking investigations into the deaths of children in institutional settings should be legally empowered to make recommendations to government departments and other public authorities about the remedial action necessary to prevent the death or serious harm of another child; Ministers and other public authorities should be required to formally and publicly respond to such recommendations.

⁷⁰ Biehal, N. et al (2014) Keeping children safe: allegations concerning the abuse or neglect of children in care. Final report, page 69.

RECOMMENDATION 7: Institutions should be legally required to notify parents (and local authorities when the child is looked after) and Local Safeguarding Children Boards whenever a serious incident involving the care and safety of a child occurs.

RECOMMENDATION 8: Comprehensive restraint data should be routinely collected and published across all institutional settings.

RECOMMENDATION 9: Where the state, or its contractors, has been found to violate the rights of children within institutional settings, the state should have a legal duty to inform the child of this violation and his or her right to an effective remedy.

RECOMMENDATION 10: The UK should ratify the CRC communications procedure and actively promote this and other remedies to children living in institutional settings.

RECOMMENDATION 11: The deliberate infliction of pain as a form of restraint should be prohibited in all institutional settings.

RECOMMENDATION 12: All institutional settings should be empowered to use, and be trained in, the same accredited restraint techniques. Experts in child health, welfare and human rights should develop these techniques. Staff recruitment, induction, training and development should consistently emphasise the importance of positive communication and calm, respectful environments where restraint is used rarely and only as a last resort.

RECOMMENDATION 13: Restraint techniques authorised by the state should be widely disseminated to the public and made known to children (and their families) living in institutional settings.

RECOMMENDATION 14: The strip-searching of children under restraint should be prohibited. Humane and dignified alternatives to strip-searching should be introduced in all children's institutional settings.

RECOMMENDATION 15: The legislation empowering Ministers to establish secure colleges should be repealed. Children must never be detained in penal custody.

RECOMMENDATION 16: Whenever a child is injured in custody (or any other institutional setting), this should be automatically investigated as a child protection matter by the local authority in which the child lives.

RECOMMENDATION 17: The reasonable punishment defence should be repealed and children's right to protection from all forms of violence positively promoted to children and adults.

RECOMMENDATION 18: Local authorities should be provided ring-fenced funding by central government to secure the child's right to family life. No child should be deprived of his or her family environment because of low income.

RECOMMENDATION 19: National guidance and unified standards for complaints procedures for children in all institutional settings should be developed, following research on children's views and experiences across the range of establishments.

RECOMMENDATION 20: All children should be legally entitled to assistance from an independent advocate when they have concerns that their rights are not being upheld. This right should be widely promoted to children.

RECOMMENDATION 21: All children living in institutional settings should be guaranteed legal aid for advice and representation in connection with raising concerns and challenging mistreatment.

RECOMMENDATION 22: The law should consistently require placements close to home, unless this goes against the child's wishes and is demonstrably not in his or her best interests.

RECOMMENDATION 23: The right to family contact should be consistent across all institutional settings. Institutions should be prohibited from using family contact as a reward or punishment.

RECOMMENDATION 24: No child should be held in immigration detention.

RECOMMENDATION 25: The short and long-term harm caused by contact with the criminal justice system should be investigated, with a view to developing a distinctive approach for all children where their welfare and rights are paramount.

RECOMMENDATION 26: A statutory safeguard should ensure that children are only ever deprived of their liberty as a very last resort.

RECOMMENDATION 27: Children deprived of their liberty should never be cared for, or mixed with, adults.

RECOMMENDATION 28: Ministers should annually report to parliament on the education, health and well-being of children in all forms of institutional settings.

RECOMMENDATION 29: A single, well-publicised contact number should be established whereby children can access local authority child protection services, on a par with the national 101 number for contacting the police.

RECOMMENDATION 30: A review of safeguards in institutional settings should be established, with the aim of achieving consistency in rights and protection wherever children live.

Article 39's vision is a country where children living in institutional settings are given the best of care and protection, in environments where they feel safe, valued and respected, and their views and experiences matter.

www.article39.org.uk