



FIGHTING FOR
CHILDREN'S RIGHTS
IN INSTITUTIONAL SETTINGS

**SUBMISSION TO CHARLIE TAYLOR REVIEW:
AUTHORISATION OF PAIN-INDUCING RESTRAINT
ON CHILDREN**

About Article 39

1. 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.

Independent Inquiry into Child Sexual Abuse

2. At the end of February 2019, the Independent Inquiry into Child Sexual Abuse concluded "pain compliance should be seen as a form of child abuse and must cease".¹ One of the inquiry's seven recommendations is:

Recommendation 5

The Chair and Panel consider that the use of pain compliance techniques should be seen as a form of child abuse, and that it is likely to contribute to a culture of violence, which may increase the risk of child sexual abuse.

The Chair and Panel recommend that the Ministry of Justice prohibits the use of pain compliance techniques by withdrawing all policy permitting its use, and setting out that this practice is prohibited by way of regulation.²

3. Child abuse cannot be justified in any circumstances. Within a closed institution, officially sanctioned and deliberately organised to be inflicted on extremely vulnerable children, it is especially egregious.
4. **We contend that, at the very least, the Ministry of Justice should have amended the terms of reference of the present review in the light of the public inquiry's findings. It is our firm belief that the only legitimate remaining task for the review is to provide advice to the Government on implementing the inquiry's recommendation.**

Background

5. The Ministry of Justice's decision to carry out a fuller assessment of the authorisation of pain-inducing restraint within the children's secure estate followed the internal review of pain-inducing restraint during the escorting process, itself initiated after our pre-action letter. The internal review concluded that the policy of authorising and training staff to use pain-inducing restraint during escort remained necessary – despite the contract-holder GEOAmev indicating it could operate its responsibilities without the use of these techniques and official records indicating they had not been used since the company took on the contract.
6. We were notified of the wider review in May 2018. Some five months later, In October 2018, following our application for permission to apply for a judicial review, we were informed that Charlie Taylor had been appointed to lead the process. Our application to the High Court was stayed pending this review and the outcome of the Joint Committee on Human Rights' youth detention inquiry. That latter inquiry reported last month. It concluded:

There is clear evidence that the use of pain-inducing techniques (which are designed to cause pain and work by deliberately inflicting pain) on children inflicts physical distress and psychological harm in both the short and longer term, and it is clearly not compliant with human rights standards.

We recommend that the use of specific pain-inducing techniques in Youth Offenders' Institutes [sic] should be prohibited. We also recognise the right of prison officers to act in self-defence and we are aware that these issues are currently subject to review.³

7. In a letter to Justice Minister Edward Argar, the Committee's Chair has clarified that the prohibition recommendation extends to secure training centres and to the escorting process.⁴

The death of Adam Rickwood

8. 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.
9. 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 8th 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.⁵

10. 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.⁶
11. 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. Now that the Independent Inquiry into Child Sexual Abuse has concluded that pain-inducing restraint is a form of child abuse, there can be no further delay in withdrawing these techniques.

Breach of children's human rights

12. Human rights bodies have been unanimous in urging the removal of pain-inducing restraint. (Health and educational settings are considered separately in paragraphs 45-51 below).

Table 1: Human rights opposition to pain-inducing restraint

2007	The UN Committee on the Rights of the Child issues its General Comment on protection from corporal punishment and other cruel or degrading forms of punishment. The document states: “Detailed guidance and training [in educational and other settings] is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control”. ⁷
2008	Following its inquiry on restraint in secure training centres, the Joint Committee on Human Rights urges the “abolition without delay” of restraint techniques which involve the deliberate infliction of pain. ⁸
2008	The Council of Europe’s Human Rights Commissioner urges “the immediate discontinuation of all methods of restraint that aim to deliberately inflict pain on children”. ⁹
2009	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommends the UK “discontinue the use in juvenile establishments of manual restraint based upon pain compliant methods”. ¹⁰
2009	Following its inquiry into children’s rights, the Joint Committee on Human Rights repeats its finding that pain-inducing restraint is a breach of children’s human rights: “We reiterate our previous conclusions that techniques which rely on the use of pain are incompatible with the UNCRC”. ¹¹
2012	Her Majesty’s Inspectorate of Prisons issues its revised inspection criteria for juvenile prisons. This includes the expectation that “pain infliction is not applied”. ¹²
2013	The UN Committee Against Torture recommends the UK “ban the use of any technique designed to inflict pain on children”. ¹³
2013	The National Preventive Mechanism, charged with preventing torture in places of detention, tells UK Government: “The use of pain to secure compliance is unacceptable”. ¹⁴
2015	The four UK Children’s Commissioners, in their submission to the UN Committee on the Rights of the Child, state: “pain should never be deliberately inflicted in order to restrain a child”. ¹⁵
2015	Her Majesty’s Inspectorate of Prisons publishes its review of MMRP and reiterates its view that “pain-inducing techniques should not be used on children”. ¹⁶
2015	Following its inquiry on the UK’s compliance with the UN Convention on the Rights of the Child, the Joint Committee on Human Rights states: “The Government must consider not only the circumstances in which force can be used but revisit the methods of restraint which can be employed”. ¹⁷
2016	The UN Committee on the Rights of the Child urges the UK to “ban the use of any technique designed to inflict pain on children”. ¹⁸
2019	The Equality and Human Rights Commission’s human rights framework for restraint states in respect of children: “Techniques intended to inflict pain as a means of control must not be used”. ¹⁹
2019	The Joint Committee on Human Rights repeats its opposition to pain-inducing restraint and confirms this also applies to the escorting process. ²⁰
2019	In a statement accompanying the Equality and Human Rights Commission’s submission to the UN Committee Against Torture, the Chair of the human rights body, David Isaac, states: “The use of pain inducing restraint on children can have both short and long-term effects and risks teaching them that violence is a way to solve problems. Deliberately inflicting pain on children must be stopped”. ²¹

Children in the secure estate

- 13. Information submitted by youth offending teams (YOTs) to the Youth Justice Board between 2014 and 2016 demonstrates the very high levels of need among children admitted to custody, as shown in Table 2 below. The vast majority of remanded and sentenced children are detained in young offender institutions (YOIs) and secure training centres (STCs) – establishments which are officially considered “not fit for the purpose of caring for or rehabilitating children and young people”.²²
- 14. Only 9% of 834 children were held in secure children’s homes (SCHs) in February 2019 (latest data available).²³ These are institutions required by law to meet quality childcare standards.²⁴

Table 2: Children’s needs and circumstances, 2014-2016²⁵

Nature of concern	% of children entering custody for whom YOTs were concerned about		
	YOIs	STCs	SCHs
Learning disability or difficulty	28%	37%	47%
Suicide or self-harm	26%	40%	46%
Substance misuse	45%	46%	45%
Mental health	29%	41%	44%
Physical health	27%	31%	41%
Looked after child prior to detention	30%	38%	40%
Sexual exploitation	4%	15%	25%
Current child protection plan	3%	7%	17%

- 15. Latest data from Her Majesty’s Inspectorate of Prisons’ surveys of children in custody shows in 2017-18:
 - 39% of boys in juvenile young offender institutions had experienced being in local authority care
 - 44% of children in secure training centres had experienced being in local authority care
 - 19% of boys in juvenile young offender institutions reported having a disability
 - 25% of children in secure training centres reported having a disability.²⁶

Pain-inducing techniques

- 16. One-third of the restraint techniques in Minimising and Managing Physical Restraint (MMPR) are officially recognised as having as their sole or primary purpose the deliberate infliction of pain. These are:
 - Thumb flexion
 - Mandibular angle technique

- Wrist flexion

17. However, the MMPR restraint technique most frequently used in child prisons – the inverted wrist hold – also causes pain. Official records show it was used 3,692 times last year, accounting for a quarter of the techniques applied on children overall.²⁷
18. The MMPR volume 5 manual, which outlines how each technique is to be applied on children, is heavily redacted. It is therefore impossible to assess whether, in effect, the inverted wrist hold is designed to deliberately inflict pain. When Her Majesty's Inspectorate of Prisons reviewed the MMPR system both children and staff reported that it causes pain. A child said:

*Yes. The inverted wrist was painful. If it hurts and you tell them, they tell you to stop moaning.*²⁸

19. A member of staff said:

*Yes I know they are painful because we practised on each other during the training so I experienced it. Some are uncomfortable. The figure of four [lock] is very uncomfortable and the inverted wrist hold hurts.*²⁹

Restraint recording

20. Official data on the use of physical restraint, including pain-inducing restraint, is almost entirely drawn from the perspective of staff. It is staff who record incidents of restraint, and it is this recording which the Ministry of Justice uses for its internal reviews and publications. Inspection reports regularly indicate irregularity in prison restraint recording, including: variance between incidents captured on CCTV and the written accounts of officers; different accounts between officers involved in the same incident; inadequate or missing documentation; lost CCTV footage; and the absence of debriefing with children. The serious case review of Medway secure training centre observed that "The use of [pain-inducing] techniques features strongly in the BBC Panorama programme and appeared to enable an environment of increased risk of abuse to children".³⁰ Despite footage showing children being inflicted with pain, official statistics claim not a single pain-inducing restraint technique was used in that institution in the year to March 2016.³¹
21. Preventing restraint requires an understanding of why such incidents occur. This, in turn, relies upon staff acting professionally in giving full and honest accounts. It is also critical that the child's own version of events is properly documented: we need to know how they were feeling prior to restraint being used, their understanding of their behaviour and actions, what staff did or didn't do to help or worsen the

situation, and what could be done differently to avert such an escalation in future. Other pertinent information includes the child's account of how restraint holds were applied and whether they suffered any injuries or other harm.

22. In July 2007, the coroner presiding over the inquest into the restraint death of 15 year-old Gareth Myatt set out 34 actions required to prevent the future deaths of children in custody. This included:

Action 2: every statutory Incident Report involving the use of PCC [Physical Control in Care – the system of restraint then in use in STCs] should contain full details of what happened, statements by those involved, any injury to a trainee or to staff, reasons for the use of PCC and reasons why other means of dealing with the situation were not used or had proved unsuccessful. Such Reports must also include a statement by the trainee, in their own hand where possible, and the form should provide the opportunity for a trainee to report any injury. Up to the time of Gareth's death there was no input from the child into this Reporting system. The new Reports should include a facility for both staff and trainees to conclude what lessons they had learned from the incident and how PCC might be avoided on a future occasion.

This need for the trainee's account, allied to the matters as to "complaints" under Action 3 below, came to be referred to during the Inquest as "listening to the voice of the child". That phrase is a telling one, and is one that ought to be borne in mind by everyone at all times.³²

23. We were very dismayed to learn – through the serious case review into Medway secure training centre – that Barnardo's advocates are contracted to only proactively offer debriefing support to children after their first experience of restraint. This is dangerous and professionally irresponsible.

MMPR: a system especially designed for children?

24. The Government has consistently described MMPR as a system especially for children. This is misleading. The underpinning aims, values and approaches may be designed around the needs and rights of children. But the restraint techniques themselves are largely transferred from the adult penal estate. The Restraint Advisory Board reported that only a third of the MMPR restraint techniques were newly designed for children. Of the remaining eight techniques:

- Two were already used in secure training centres (part of the Physical Control in Care – PCC – a system developed by the Home Office based on adult prisons)
- Three are transferred from the adult prison Control & Restraint (C&R) system
- Three are transferred from PCC and C&R.³³

25. The National Tactical Response Group (prison riot squad) was given the task of devising the MMPR restraint techniques. In her foreword to the report of the Restraint Advisory Board, which she chaired, Professor Sue Bailey explained:

The appointment of a 'preferred provider' to develop the new system (whatever the policy or operational considerations leading to this conclusion at the time) has had a number of practical implications for and placed inherent limitations upon [the Board's] work. For example, the provider (National Offender Management Service and its specialist unit, National Tactical Response Group, hereafter 'NOMS/NTRG') was not asked, through any commissioning process, to consider developing the option of a restraint system that involved no pain-inducing techniques.³⁴

26. When Article 39's Director sought full disclosure of the MMPR volume 5 manual, one of the reasons the Ministry of Justice put forward for secrecy was the crossover with techniques used in adult prisons.³⁵ This was accepted by the Information Commissioner's Office and went on to become the principal legal reason for maintaining the 182 redactions in the manual. In the Court of Appeal, the presiding judge, Sir Brian Leveson, said:

The [First tier Tribunal] had to balance the circumstances pertaining to STCs affecting those under 15 (where the relevant material in the form of the PCC has been disclosed without adverse effect) and those pertaining to YOIs and prisons for those over 17 (where the Use of Force manual has not been disclosed in circumstances which have not been further challenged). For those between 15 and 17, a decision had to be reached as to which side of the line the MMPR fell. The FTT decided that it fell on the adult side for reasons which it gave, the most important of which, in my judgment, was the similarity between the MMPR and the Use of Force Manual.³⁶

MMPR pain-inducing restraint: not supported by the evidence at the time

27. The MMPR system arose from the deaths following restraint of two children, Gareth Myatt and Adam Rickwood. Despite overwhelming evidence against, the 2007/08 independent review of restraint in juvenile secure settings, set up as a consequence of the boys' deaths, 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.³⁷

28. The 2007/08 review was undertaken by two former directors of social services, Peter Smallridge and Andrew Williamson. They considered Control and Restraint (C&R), then used in all adult prisons and juvenile young offender institutions, and Physical

Control in Care (PCC), which was then used in all secure training centres.

29. 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.

30. 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’.*³⁸

31. Many distressing accounts of children being restrained are contained in the Smallridge and Williamson 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.*³⁹

32. 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.*⁴⁰
*[Our emphasis].*⁴¹

33. 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.⁴² Smallridge and Williamson omitted to indicate that the inquiry panel into David Bennett’s death repudiated the use of pain-inducing restraint.⁴³ Nor did they admit that David Bennett died following protracted restraint – he was held face down for 25 minutes

after a painful thumb lock was used.

34. 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”⁴⁴ 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 1967.⁴⁵

35. Smallridge and Williamson omitted to discuss or reference the NICE⁴⁶ 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.*⁴⁷

36. 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

37. The detailed evidence submitted to Smallridge and Williamson’s 2007/08 review was clear that pain-inducing restraint is extremely harmful and a breach of children’s human rights, including their rights to protection from all forms of violence and inhuman and degrading treatment or punishment. Smallridge and Williamson’s conclusion that “pain compliance does have a role in restraint”⁴⁸ remains inexplicable given the weight of arguments they were presented with, including:

- 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”.⁴⁹

Children and young people’s testimony

38. 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.⁵⁰

39. 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’.⁵¹

40. 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.⁵²

41. 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.⁵³

42. More recently, during a review of MMRP, 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.⁵⁴

Children's complaints about restraint

43. We fear pain-infliction during restraint may be a common feature of children's complaints and abuse allegations; certainly, the majority of referrals to local authorities concern the use of restraint.
44. Article 39 published research into allegations against adults working in institutional settings, including custody.⁵⁵ 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. The Medway Improvement Board, established by the former Secretary of State for Justice after the BBC Panorama exposé of child abuse in Medway secure training centre, found a similarly parlous situation. Children were sent letters from the local authorities telling them their abuse allegations could not be substantiated because of lack of CCTV evidence:

The Board noted with unease that young people are sent letters from the local authority telling them that their allegations have not been substantiated based on a lack of CCTV evidence (e.g. “on seeing the CCTV we could not see much due to where the cameras were situated and therefore could not evidence what you said happened”; “we have therefore concluded that the allegation of you being hurt by a member of staff is unsubstantiated, which means that we do not have any proof to evidence that the staff member had hurt you and we cannot tell either way what really happened”).⁵⁶

Health, education and social care settings

45. As a matter of policy, 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.⁵⁷

46. 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.⁵⁸

47. The Association of Directors of Children’s Services, whose members are responsible for statutory child protection services, has stated:

We firmly believe that restraint techniques involving the use of pain should not be deployed in the juvenile secure estate. We remain concerned about the physical and emotional risks to young people of this type of restraint.⁵⁹

48. 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.*⁶⁰

49. The guidance advises:

*Do not use restrictive interventions to punish, inflict pain, suffering or humiliation, or establish dominance.*⁶¹

50. 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.*⁶²

51. 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.*⁶³

International evidence

52. We are pleased that the terms of reference of the Charlie Taylor review include international evidence post the 2016 review commissioned by the Youth Justice Board. That piece of work arose from one of the recommendations of the Restraint Advisory Board in 2011.⁶⁴

53. The report from the 2016 review was short, just 14 pages long, and its conclusion very surprising:

*...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.*⁶⁵

54. 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’. We draw attention to the Council of Europe Human Rights Commissioner’s observation in 2008:

The Commissioner has been struck by the apparent focus in UK custodial settings on the issue of restraint techniques and what is “allowed” and “not allowed”. He is not aware of any other member state that sanctions the use of deliberate pain as a method of restraining a child.⁶⁶

Risk of corrosive cultures

55. 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.⁶⁷ [Our emphasis].

56. 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. To this end, we completely agree with the Independent Inquiry into Child Sexual Abuse’s finding that:

The use of these techniques, however challenging the behaviour of the child, normalises pain for staff and children. This, in turn, prevents staff from building trusting relationships and inhibits a child from reporting sexual abuse. The use of pain compliance, although authorised as a last resort, has attracted criticism from a number of informed commentators. Pain compliance contributes to a culture of fear and has the effect of silencing the child at a time when it is important that the child feels safe to speak out about aspects of their lives, including sexual abuse.⁶⁸

Punitive practices which are culturally ingrained

57. Prisons are the only children's settings where staff are authorised and trained to inflict psychological and physical pain as a form of physical restraint. Children with similarly high levels of need are looked after in secure children's homes, mental health units and residential special schools without the use of such techniques. Pain-inducing restraint exists because of the history, culture and punitive nature of prisons rather than this being the only means to safely care for vulnerable children.
58. Of the four government departments who have a duty of care towards children in institutional settings – the Department for Education, the Department of Health, the Ministry of Justice and the Home Office, only the two welfare departments have eschewed the deliberate infliction of pain as a form of restraint – despite children have similarly high levels of needs and sharing backgrounds of abuse, trauma and violence.
59. It is to be expected that staff (including trade union representatives) socialised into an environment where the infliction of pain on children has been normalised will resist change. The withdrawal of other penal practices such as restraint for good order and discipline in secure training centres and routine strip-searching were similarly strongly opposed. 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. While we are not confident that official records represent the true extent of restraint (in the past or now), latest data shows pain-inducing restraint was used 66 times in three secure training centres in 2017/18.⁶⁹ With the caveat that both sets of figures are likely to under-represent their use, this means over a period of 13 years each of these institutions has moved, on average, from deliberately inflicting pain on children four times a week in 2004/05 to twice a month in 2017/18.
60. The prohibition of pain-inducing restraint will not affect the right of staff (or children) to lawfully defend themselves. Prisons and GEOAmey already permit their staff to

dispense with MMPR techniques when faced with grave threats; and they teach personal protective techniques.

Escorting experience

61. 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.
62. 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.
63. 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 GEOAmev 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 (see Table 2 above for sexual exploitation concerns, for example). It is of utmost importance that children are made to feel as safe and secure as possible during this process.
64. Children may be escorted to and from establishments 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.

Conclusion

65. The deliberate infliction of pain on children is a form of child abuse.
66. 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.

67. Training members of staff to inflict pain – which can cause psychological and physical suffering – gives absolutely the wrong message about their professional role, responsibilities and expected conduct. It sets them up to anticipate children to be difficult, out of control and challenging and this, in turn, shapes their interactions – and the behaviour of children.
68. Deliberately hurting children as a form of restraint has no professional credibility. It is the antithesis of child-centred. It is authorised within penal and immigration settings because of the history, culture and organisational arrangements (including poor levels of staffing and training). The policy did not evolve from, and nor does it reflect, the needs of children.
69. Children's transit to and from custodial institutions has the potential to be uniquely frightening and distressing – children do not know where they are going, they are in a locked vehicle, possibly in handcuffs, and they are out of public view. There are no independent witnesses for the child. Being subject to pain-inducing restraint in this environment could prove to be deeply traumatic, diminishing the child's confidence and propensity to ask for help once in custody. This has serious child protection implications.

Article 39
7 May 2019

¹ Independent Inquiry Child Sexual Abuse (February 2019) Sexual abuse of children in custodial institutions: 2009-2017, page vi.

² Independent Inquiry Child Sexual Abuse (February 2019) Sexual abuse of children in custodial institutions: 2009-2017, page 102.

³ Joint Committee on Human Rights (April 2019) Youth detention: solitary confinement and restraint, page 33.

⁴ Letter to Edward Argar MP, dated 2 May 2019: <https://www.parliament.uk/documents/joint-committees/human-rights/correspondence/190502-Letter-Edward-Argar-Youth-detention-report.pdf>

⁵ Prisons and Probation Ombudsman (2006) Circumstances surrounding the death of a boy at Hassockfield secure training centre on 8 August 2004.

⁶ INQUEST press release, 27 January 2011: Youth justice agencies condemned for unlawful treatment of vulnerable boy in custody.

⁷ Committee on the Rights of the Child (2007) General Comment no. 8. The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.

⁸ Joint Committee on Human Rights (2008) The use of restraint in secure training centres, para' 86.

⁹ Hammarberg, T. (October 2008) memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visits to the United Kingdom 5-8 February 2008 and 31 March – 2 April 2008, para' 53.

¹⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2009) Report to the government of the United Kingdom on the visit to the United Kingdom carried out by the

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 November to 1 December 2008, para' 107.

¹¹ Joint Committee on Human Rights (200) Children's rights, para' 94.

¹² Her Majesty's Inspectorate of Prisons (2012) Expectations. Criteria for assessing the treatment of children and young people and conditions in prisons. Version 3. Expectation 24.

¹³ UN Committee Against Torture (2013) Concluding observations on the fifth periodic report of the United Kingdom, para' 28.

¹⁴ National Preventive Mechanism (2013) Response to the Ministry of Justice consultation 'Transforming youth custody'.

¹⁵ UK Children's Commissioners (2015) Report of the UK Children's Commissioners. UN Committee on the Rights of the Child examination of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, page 46.

¹⁶ Her Majesty's Inspectorate of Prisons (2015) Behaviour management and restraint of children in custody. A review of the early implementation of MMPR by HM Inspectorate of Prisons, page 13.

¹⁷ Joint Committee on Human Rights (2015) The UK's compliance with the UN Convention on the Rights of the Child, para' 127.

¹⁸ Committee on the Rights of the Child (3 June 2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, page 8.

¹⁹ Equality and Human Rights Commission (March 2019) Human rights framework for restraint: principles for the lawful use of physical, chemical, mechanical and coercive restrictive interventions, page 8.

²⁰ Letter to Edward Argar MP, dated 2 May 2019: <https://www.parliament.uk/documents/joint-committees/human-rights/correspondence/190502-Letter-Edward-Argar-Youth-detention-report.pdf>

²¹ Bulman, M., 'Age of criminal responsibility in England and Wales 'too low' says watchdog', Independent newspaper, 6 May 2019.

²² This was the acknowledgment of the Youth Justice Board, and the conclusion of the Youth Custody Improvement Board, which was asked by the then Justice Secretary, Michael Gove, to review the children's secure estate: Wood, A., Bailey, S. and Butler, R. (2017) Findings and recommendations of the Youth Custody Improvement Board, para' 5.

²³ Ministry of Justice (April 2019) Youth custody data February 2019, Table 4.

²⁴ The Children's Homes (England) Regulations 2015.

²⁵ 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.

²⁶ All data is taken from: Her Majesty's Inspectorate of Prisons (2019) Children in custody 2017–18. An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions.

²⁷ Ministry of Justice and Youth Justice Board for England and Wales (January 2019) Youth justice statistics, Table 8.28: Number of times each MMPR technique was used, year ending March 2018.

²⁸ Her Majesty's Inspectorate of Prisons (2015) Behaviour management and restraint of children in custody. A review of the early implementation of MMPR by HM Inspectorate of Prisons, page 50.

²⁹ Her Majesty's Inspectorate of Prisons (2015) Behaviour management and restraint of children in custody. A review of the early implementation of MMPR by HM Inspectorate of Prisons, page 50.

³⁰ Walters, A. (January 2019) Learning for organisations arising from incidents at Medway secure training centre. Medway Safeguarding Children Board, para' 9.2.15.

³¹ Ministry of Justice (January 2017) Youth justice statistics, Table 8.28: Number of times each MMPR technique was used, year ending March 2016.

³² Rule 43 letter from His Honour Richard Pollard, Assistant Deputy Coroner for the County of Northampton to The Rt. Hon. Jack Straw MP, Secretary of State for Justice and Lord Chancellor, 18 July 2007.

³³ Restraint Advisory Board (2011) Assessment of behaviour recognition & physical restraint (BRPR) for children in the secure estate. Submitted by the National Offender Management Service, page 48.

³⁴ Restraint Advisory Board (2011) Assessment of behaviour recognition & physical restraint (BRPR) for children in the secure estate. Submitted by the National Offender Management Service, page 3.

³⁵ Information Commissioner's Office (March 2014) Decision notice FS50478716 (para' 24) https://ico.org.uk/media/action-weve-taken/decision-notices/2014/962876/fs_50478716.pdf

³⁶ [2017] EWCA Civ 1876 [51] <http://www.bailii.org/ew/cases/EWCA/Civ/2017/1876.html>

³⁷ 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.

³⁸ *ibid*, page 15.

³⁹ *ibid*, pages 15-16.

⁴⁰ *ibid*, page 40.

⁴¹ *ibid*.

⁴² *ibid*, page 42.

⁴³ 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”.

⁴⁴ 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.

⁴⁵ Section 65, Criminal Justice Act 1967.

⁴⁶ The National Institute for Health and Care Excellence.

⁴⁷ 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.

⁴⁸ Smallridge, P. and Williamson, A. (2008) Independent review of restraint in juvenile secure settings. Ministry of Justice and Department for Children, Schools and Families, para’ 6.77.

⁴⁹ 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.

⁵⁰ National Children’s Bureau (2008) A review of safeguarding in the secure estate. Youth Justice Board, page 31.

⁵¹ 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 16.

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⁵³ User Voice (2011) Young people’s views on restraint in the secure estate. Office of Children’s Commissioner for England. The last quote is from a child held in a secure children’s home.

⁵⁴ Her Majesty’s Inspectorate of Prisons (November 2015) Behaviour management and restraint of children in custody. A review of the early implementation of MMPR by HM Inspectorate of Prisons, pages 50-52.

⁵⁵ Article 39 (November 2017) Abuse in children’s institutional settings: How much is known?

⁵⁶ Medway Improvement Board (March 2016) Final report of the Board’s advice to Secretary of State for Justice, page 37.

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⁵⁸ Department for Education (April 2015) Guide to the children’s homes regulations including the quality standards, para’ 9.51.

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www.gov.uk/government/uploads/system/uploads/attachment_data/file/663453/Reducing_the_Need_for_Restraint_and_Restrictive_Intervention.pdf

⁶⁴ Restraint Advisory Board (2011) Assessment of behaviour recognition & physical restraint (BRPR) for children in the secure estate. Submitted by the National Offender Management Service, page 59

⁶⁵ Dale, C. et al (2016) Review of international evidence and practice on non-pain inducing techniques and systems of restraint. Youth Justice Board, page 14.

⁶⁶ Hammarberg, T. (October 2008) memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visits to the United Kingdom 5-8 February 2008 and 31 March – 2 April 2008.

⁶⁷ Ibid, page 49.

⁶⁸ Independent Inquiry Child Sexual Abuse (February 2019) Sexual abuse of children in custodial institutions: 2009-2017, page 99.

⁶⁹ Ministry of Justice (January 2019) Youth justice statistics, Table 8.28: Number of times each MMPR technique was used, year ending March 2018.