



Response to the Ministry of Justice Consultation 'Transforming Youth Custody'

Members of the National Preventive Mechanism April 2013

The United Kingdom is required by its status as a party to the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) to establish a National Preventive Mechanism (NPM) to carry out independent, preventative inspections and monitoring of all places of detention.

Eighteen agencies have been designated as part of the UK NPM by government as each has a statutory right to make unannounced visits to places of detention. The NPM is coordinated by the Chief Inspector of Prisons. The steering group of the NPM has established a children and young people's sub-group coordinated by the Office for the Children's Commissioner for England (OCC) to advise on matters involving children. OPCAT requires the NPM to have powers to submit proposals and observations concerning existing or draft legislation (OPCAT Article 19 (c)).

This consultation response is submitted on behalf of all members of the UK NPM. It should be noted that it is a generic response focusing on the principles that must underpin best practice for children who are deprived of their liberty in a criminal justice context and does not address the specific questions posed in the consultation document.

Introduction

The NPM welcomes the Green Paper's recognition that the overwhelming majority of children who end up in custody have come from complex and troubled family backgrounds with high levels of abuse and neglect, and have significant health and education needs often linked to neurodevelopmental disorders. We support the central tenet that the principal objective of the youth justice system should be to prevent offending by children and that this should be achieved by effective preventive early intervention, punishment for those who break the law and rehabilitation.

While the Government's recognition of the importance of improving education outcomes for children in the criminal justice system is welcome, we believe that a more comprehensive approach that addresses the social, emotional,

psychological and physical needs of children in custody is essential, if the laudable objective of rehabilitation and reduction in offending is to be achieved. A troubled track record within the education system and poor educational outcomes are undoubtedly significant contributing factors to offending and reoffending behaviour but they are part of a complex matrix of deprivation and disadvantage suffered by these children all of which must be effectively addressed if the goal of rehabilitation and successful re-entry into the community is to be achieved and sustained.

Leading and running custodial settings requires high levels of knowledge, expertise and experience. The scale of the challenge that such environments and populations present should not be underestimated and it is essential that they are not conflated with mainstream or community based special schools. Effective leadership of custodial settings is not simply a matter of head teachers having transferable skills. These are specialist high risk environments with extremely vulnerable and volatile populations that require leadership with commensurate specialist knowledge and skills.

NPM members welcome the significant reduction in the numbers of children being sentenced to custody and look forward to this number being further reduced. We recognise that the smaller numbers means that those in custody are likely to have committed more serious crimes and to be more damaged than the population of previous years. We consider that this makes it even more imperative that the holistic needs of these damaged and troubled children are comprehensively addressed during their period in detention. Members remain concerned at the numbers held on remand and note that multiple international treaties to which the UK Government is a signatory require that pre-trial detention should be a measure of last resort and for the shortest possible time, replaced wherever possible by alternative measures. (CRC 37(b); Beijing 13.1; Havana 1 and 2; Beijing 13.2; Tokyo 6.2). Members note that comprehensive approaches to juvenile justice in other jurisdictions, such as the 'whole system approach' in Scotland which aims to improve the response to all children and young people dealt with by either criminal justice or the children's hearing system, have shown promising results against a range of expected outcomes, including reduced numbers of children and young people committing offences.

Savings arising from the falling numbers of children in custody should be reinvested in the establishment of suitable facilities in compliance with the principles set out below.

The UN Convention on the Rights of the Child (UNCRC) sets out clearly the rights to which every child is entitled including, and sometimes especially, those in custody. The UNCRC states emphatically that all rights in the Convention are inviolate and inalienable and apply to all children whatever their circumstances. The specific articles that address children in detention are:

Article 37

States Parties shall ensure that:

(a) *No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

(b) *No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

(c) *Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

(d) *Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*

Article 40

States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

In addition, we consider the following articles to be relevant and reproduce Article 39 in full given the profile of the population of children in custodial settings:

- Art. 3: best interests
- Art. 19: protection from all forms of violence
- Art. 24: right to health and health services
- Art. 28: right to education
- Art. 39: *States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*

All NPM members welcome and actively advocate a more homely child centred environment for children who are detained in custodial settings.

Alternative designations such as academies, secure training centres and so on, may send out an important signal about the importance of education in rehabilitation and reducing reoffending. Nevertheless, we believe it is important to remember that these institutions are locked environments in which children are deprived of their liberty. These environments present very particular risks and challenges, often highlighted in inspection reports. NPM members are unanimous in asserting that the inspection and monitoring of such institutions must recognise the inherent risks of closed institutions and the special need for protection of children who are deprived of their liberty.

Principles for good practice in children's custodial settings

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules') set out the conditions and circumstances which ensure respect for the human rights of juveniles, including

31. *Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.*
32. *The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.*

Below, we set out a number of principles based on these rules, which NPM members believe should underpin the design and management of custodial settings for children. A number of international approaches – such as the Missouri model – embody many of these principles, and it is important that next steps reflect the learning from these models.

1. **Safeguarding and child protection:** Every child must be able to live free from all forms of harm and violence whilst detained in the care of the state. The structure and conditions of the environment, and regular staff training and supervision, should actively promote the safety and physical and psychological integrity of the detained children. Children should **feel** safe as well as be safe.

On a recent inspection we observed how a good physical environment has a positive impact on the behaviour of young people. Evidence from the establishment suggested that there were less incidents on that Unit than others even though it contained some of the most serious offenders. Young people felt that they were being respected and it made a difference to their behaviour.

2. **Care and well-being:** Every child should have an allocated caseworker who provides personalised care on a day to day basis. Many children in custody have attachment difficulties or disorders and the development of positive relationships with key figures is an essential component of successful rehabilitation. Members report that these

arrangements tend to work better in smaller settings such as Secure Training Centres and Local Authority Secure Children's Homes. NPM members would like to see the development of therapeutic communities within custodial settings where positive and constructive group norms and processes are utilised to help the children come to terms with their crimes and develop the necessary insight and emotional intelligence to enable them to deal more effectively with their feelings. Interesting models are being employed in some settings with young adults and these, as well as other models, should be assessed for use in the children's secure estate.

3. Punishment and control: Children in custody have, by a substantial majority, experienced little positive love and affection. Establishment and maintenance of good order should therefore be primarily via incentive schemes and a general ethos of respect between staff and children and amongst children themselves. This ethos must be actively promoted by all and strongly articulated by the director or governor. In our combined experience, the imposition of good boundaries, coupled with a strong caring ethos from residential staff, well targeted education and training and meaningful activities is best practice. All staff must be trained in de-escalation techniques and this must be the first response when there is an altercation. Restraint should only ever be used as a last resort. Single separation should be used for the minimum period of time necessary for a young person to calm down. Strip cells should not be used. The use of pain to secure compliance is unacceptable.
4. Whistleblowing, complaints and advocacy: every child must have access to an independent advocate with whom they can speak in private. The induction programme must include a meeting with the advocacy service and information about how to contact an advocate. The complaints system must be well advertised and no child penalised for making a complaint. Staff must be informed about arrangements for whistleblowing.
5. Size of settings and environment: Units should be small enough to ensure personal and individual care for each child. Large institutions such as the majority of male YOIs are inherently unsafe and rely on high levels of power and control by staff to maintain order. In children and young people surveys carried out in 2011-2012, 32% of young people said they had felt unsafe in the YOI they were currently in. Smaller units, such as those that are established for girls at HMP Parc, the Keppel Unit at Wetherby and Waveney at Warren Hill, are also good examples of where smaller units work well, providing a more intimate and safe environment and enabling a regime where there are greater levels of association and the children can develop the relationship skills they so desperately need if they are to be successfully reintegrated into their communities on release. The scale of the secure training centres (STCs) and secure children's homes (SCHs) is considered to be acceptable and we note the much higher levels of association in these institutions including, in the STCs, areas

in each wing where children can make breakfast and evening snacks. For this reason, we are concerned about current levels of under-occupation at these facilities. Many of the children in custody have attachment disorders and the smaller scale of the girls' units and the STCs and SCHs is far more conducive to the development of positive relationships which are critical for addressing what can otherwise be a lifelong deficit and is implicated in offending behaviour. We recognise units can be too small, and the very small numbers of girls held in girl's units creates an environment which is reported by some girls to be too intense and claustrophobic and limits the range of options available to those held. In building positive relationships and attachment which has been absent in children's lives, staff must understand the importance and implications of this and be supported to manage the attachment relationship when staff or the child are moved or children return to the community.

6. Health and well-being: Under the European Rules for juvenile offenders subject to sanctions or measures, the following must apply:

74.1. Health-care services offered to juveniles shall form an integral part of a multidisciplinary programme of care.

74.2. In order to provide a seamless web of support and therapy and without prejudice to professional confidentiality and the role of each profession, the work of doctors and nurses shall be closely co-ordinated with social workers, psychologists, teachers, other professionals and staff, who have regular contact with juvenile offenders.

75. Health care in juvenile institutions shall not be limited to treating sick patients, but shall extend to social and preventive medicine and the supervision of nutrition.

The Green Paper recognises the significant mental, physical and developmental health needs of children in custody. It is essential that custodial settings are resourced to effectively assess and address these needs. That will require good access for all children to: medical, dental, psychiatric, psychological and other mental health services; speech, language and communication therapy; drug and alcohol treatment; sexual health services and programmes to address offending behaviour including for sex offences. Children who are or have been victims themselves should be able to access suitable therapeutic interventions with continuity arranged for post release. Relevant health information should swiftly follow the young person to enable health staff to accurately undertake health assessments and ensure continuity of therapeutic intervention and medications.

7. Education: the Green Paper proposes a model that focuses very largely on education in order to improve outcomes for children who enter custody. This focus is welcome and needs to be combined with

an approach that addresses the full spectrum of complex needs which attach to children. Every child should have an assessment of their education and training needs and a programme provided that addresses identified needs. This should include both vocational and academic courses.

It is essential that the proposals in the Children and Families Bill, (currently before Parliament) regarding the introduction of Education, Health and Care Plans (EHCP) for children living in the community apply equally to children in custodial settings. The Bill seeks to specifically exclude children in custodial settings from the protections and entitlements afforded by EHCPs by proposing that EHCPs would lapse for a child entering custody. This is unacceptable and is in violation of the core principle in the UNCRC that all rights apply to all children regardless of their circumstances.

During the inspection of a Secure Training Centre, a situation came to light where educational expectations in the Centre took precedence over other identified needs for a young person and this was causing some ongoing problems. The young person had specific substance misuse needs but the allocated specialist worker was unable to see the young person during the day because he was required to attend a required number of education sessions. The young person was both reluctant to attend education and was extremely difficult to engage when there and additionally was not willing to meet with the specialist after school hours because of meal times and limited free time. The nature of the substance misuse issues had been well identified initially and were thought to be affecting his ability to engage with education but there was insufficient flexibility to allow the necessary work to be undertaken during school hours to see whether the potential resolution of health issues might then allow his commitment to education to improve. It is clearly important to take a holistic view of a young person's needs and ensure that services work together to support positive change.

8. Location: units should be disbursed around the country so that children are held within reasonable travelling distance from their homes, ensuring good contact can be maintained with families. We consider that no child shall be held more than 50 miles from their home unless removal to a greater distance is determined to be in the best interests of a particular child. Areas that are likely to have greater numbers of child offenders placed in custody should have several small units. In order to plan for the location of units, there needs to be an analysis of the population of children who receive custodial sentences or are remanded to custody. This analysis should include: gender, age, ethnicity, faith, place of residence, any known gang affiliations, type of offence, length of sentence, learning and physical difficulties and disabilities, educational level on entry and mental and physical health needs.

9. Contact with families: Maintaining family links (including where the detained young person is a parent) is essential for successful rehabilitation. Family days, regular visits and opportunities for family therapy where indicated should be integral to any custodial setting. A recent inspection of a Youth Offenders Institute revealed that they ran 5 family days, last year with very positive feedback from families. Another establishment had introduced a family forum which was helping to develop promotion of family links. Visit areas should be warm and welcoming, and be designed to accommodate siblings, facilitate good interaction. Having locally based units would ensure an increased likelihood of family contact being maintained.

During a recent inspection of one YOI, an NPM member found that 48% of young people lived over 100 miles from home. In a survey only 22% of young people said that it was easy for them to get visits, which is significantly worse than the comparator of 35%. 20% of young people did not get visits.

10. Equality and diversity: The diverse needs of each young person must be recognised and addressed: these include, but are not restricted to, race equality, nationality, religion, disability, gender, transgender issues and sexual orientation. For this to happen, establishments must adopt a clear and coordinated approach to eliminating discrimination, and promoting equitable outcomes.

11. Accommodation: Cells should always be sole occupancy and should be en suite to mitigate the risks of bullying in communal wash areas. Accommodation must also be designed in a way which reduces the risk of self-harm and suicide. They must have natural daylight, be warm in winter and have shelves for storing clothes and personal items. Ventilation in cells is a common problem, and some young people say this makes it difficult to sleep at night. The use of suitcases for storing clothing is not acceptable.

12. Staff training and collaborative working: All staff working with children (ie. not including administrative staff) must elect to work with children and not simply be on rotation from the adult estate. They must all be trained to at least NVQ level 3 on child and adolescent development. This must include knowledge of attachment theory and of the causes and consequences of child abuse and neglect.

13. Nutrition: food must be nutritious and in sufficient quantity to meet the needs of children and adolescents.

One really good example seen in a secure environment relates to the growing concern about weight increases and obesity issues for young people. Health staff, catering staff and education staff all worked together with young people to create a meaningful programme where, for example, food items were colour coded and linked to health promotion information and work was undertaken in education classes to increase awareness of the impact of healthy eating. Much of the programme was also shared with all staff to ensure a shared commitment to positive change.

14. Exercise: the UN Standard Minimum Rules for the Treatment of Prisoners (SMRTP) states: 21 (1) *Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.*

(2) *Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.*

This standard should be the minimum applied to children's custodial settings.

15. Resettlement: Release on Temporary License (ROTL) should be provided routinely as a way of preparing children for return to the community. There should be continuity of care and support for all children leaving custody. It is important that outcomes are agreed and monitored for this group. This should include arrangements to address their mental and physical health as well as suitable placements in education, employment, apprenticeships or training. No young person should be placed in bed and breakfast accommodation on exit. It is considered to be completely unsuitable.