

Written evidence from Northumbria University (YDS0002)

1. The use of force to restrain young people can have a negative psychological and emotional impact, resulting in perceptions of unfairness, a broken spirit and re-traumatisation.<sup>1</sup> Smallridge and Williamson, in their independent review of the use of restraint in youth custodial settings emphasised that there is no such thing as an ‘entirely safe restraint’ and that restraint is intrinsically unsafe as even where it does not end in physical injury it can be ‘profoundly damaging psychologically’.<sup>2</sup> The Children’s Commissioner for England found that the use of restraint generated strong emotional responses from most of the participants, but the way girls experienced restraint varied dramatically from the boys.<sup>3</sup> Many of the girls in this study felt that the procedure impacted on them negatively in terms of their mental health and well-being, and they disliked it intensely; boys in contrast reported feelings of anger.
2. In *R(C) v Secretary of State for Justice* the Court of Appeal emphasised the special obligation owed by the state to vulnerable young people deprived of their liberty. This case examined section 9 of the Criminal Justice and Public Order Act 1994, which allowed a custody officer performing custodial duties to use reasonable force where necessary to ensure good order and discipline. The Court of Appeal concluded that the practice of restraint would amount to ‘inhuman and degrading treatment’ unless the government could show that the use of restraint in order to maintain good order and discipline was necessary. Such necessity could be established by the need to prevent injury to the young person or others.<sup>4</sup> The government had failed to show that such a dangerous practice is necessary purely for the purpose of enforcing good behaviour.

---

<sup>1</sup> T.D. Strout ‘Perspectives on the experience of being physically restrained: An integrative review of the qualitative literature’ (2010) 19 *International Journal of Mental Health Nursing* 416

<sup>2</sup> P. Smallridge and A. Williamson *Independent review of restraint in juvenile secure settings* (London: Ministry of Justice and Department for Children, Schools and Families, 2008), 4.

<sup>3</sup> Office of the Children’s Commissioner *Young people’s views on restraint in the secure estate* (London: Office of the Children’s Commissioner, 2011).

<sup>4</sup> *ibid* para 79

3. Article 37 of the United Nations Convention on the Rights of the Child requires states to treat young people in custody with humanity and in a manner which takes into account the needs of persons of their age and to protect them from torture and other cruel, inhuman or degrading treatment or punishment. The UN Committee on the Rights of the Child considers that the deliberate infliction of pain is not permissible as a form of control of young people in custodial settings and that it should only be used as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.<sup>5</sup> Adam Rickwood's mother sought a judicial review of the Coroner's inquest into Adam's death. In giving judgment in *R (on the application of Pounder) v HM Coroner for the North and South Districts of Durham and Darlington*<sup>6</sup> Blake J observed that the power to use force 'is not a free-standing right to use force whenever a staff member thinks it necessary or appropriate' and he added:

'Moreover, it should have been clear to all properly self-directing public authorities that the limits on the use of force on children in custody was driven by the core principles set out in the UN Convention on the Rights of the Child, to which effect was designed to be given in UK law by the Children Act 1989, and which informs any detailed elaboration of human rights relating to children set out in the Human Rights Act 1998'.<sup>7</sup>

4. The United Nations Secretary-General in 2006 published a *World Report on Violence against Children* to examine the nature, extent and global magnitude of the violence experienced by children across all settings, including juvenile justice. The study was undertaken in collaboration with the Office of the High Commissioner for Human Rights, the United Nations Children's Fund and the World Health Organisation. The recommendations included, among other things, that states prohibit all forms of violence against children in all settings, promote non-violent values and awareness-raising and hold perpetrators of violence accountable through appropriate proceedings and sanctions.<sup>8</sup> This recommendation was subsequently re-iterated by the UN

---

<sup>5</sup> United Nations Committee on the Rights of the Child *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention. Concluding observations: Great Britain and Northern Ireland CRC/C/GBR/CO/4* (Geneva: Committee on the Rights of the Child, 2008), para 39

<sup>6</sup> [2009] EWHC 76 (Admin)

<sup>7</sup> *ibid* para 51

Committee against Torture in its 2013 report.<sup>9</sup> The UN Secretary General's Guidance Note *UN Approach to Justice for Children (2008)* seeks to ensure the full application of international norms and standards for all children who come into contact with national justice systems.<sup>10</sup> The 2008 Note argues that States should embrace a stronger rule of law for children by adopting strategies that specifically guarantee respect for children's rights. Guiding principles to be followed include the best interests of the child, the right to fair and equal treatment, the right to be heard, and the right to be protected from violence. States are urged to integrate these and other child-sensitive justice notions into relevant constitutional and legislative reform efforts, and to promote overall integrity and accountability in justice and law enforcement. In the *Resolution on Human Rights in the Administration of Justice, in particular Juvenile Justice (2011)* the UN Human Rights Council calls on states to take effective legislative, judicial, social, educative and other measures in implementing UN standards on human rights in the justice system.<sup>11</sup> The 2011 Resolution recognises that children in conflict with the law must be treated in a manner consistent with their rights, dignity and needs and urges states to take all necessary and effective measures, including legal reform where appropriate, to prevent and respond to all forms of violence against children within the justice system.

18 May 2018

---

<sup>8</sup> P. Pinheiro *Independent Expert for the United Nations Secretary-General's Study on Violence Against Children, World Report on Violence Against Children* (Geneva: UNICEF, 2006), 18-24

<sup>9</sup> United Nations Committee against Torture *Report of the Committee against Torture Fiftieth Session GA/A/68/44* (Geneva: Committee against Torture, 2013), para 28

<sup>10</sup> United Nations Secretary-General (UNSG), *Guidance Note of the Secretary-General: UN Approach to Justice for Children*, (Geneva: UNSG, 2008).

<sup>11</sup> United Nations General Assembly *Resolution on Human Rights in the Administration of Justice, in particular Juvenile Justice* (Geneva: HRC, 2011)