

## Justice Studio: Response

### Justice Committee Inquiry on Children and Young People in Custody

September 2019

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#### 1. Executive summary

Justice Studio's response sets out our opinion and evidence. We begin by setting out who we are, and then address questions raised by the Inquiry, in order, namely:

- The youth justice population and entering the system
- Suitability of the secure estate
- Resettlement and rehabilitation children and young people

#### 2. About Justice Studio

Justice Studio was founded in 2011 by Marianne Moore as a consultancy dedicated to advancing social justice and the voices of those less heard. We have worked in over 30 countries internationally, and extensively in the UK. A large proportion of our work is at the intersection of children and young people's rights and the criminal justice system. Marianne has worked extensively in youth justice for over 15 years and her clients include the YJB, the EHRC, DFID, UNICEF, Penal Reform International, and the International Juvenile Justice Observatory.

#### 3. The youth justice population and entering the system

- 3.1 Although trends can be seen, in essence, the young offender population has not significantly changed. The majority of children and young people who are detained continue to have a background of violence and abuse and are predominantly from lower socio-economic groups. Our youth prison population consists of the people in our society who have the least rights, voice and privilege. It is this status, rather than their criminality, which makes them more likely to be detained. The challenge rests in understanding and empathising with this group of children and young people in order to appropriately meet their needs.
- 3.2 Many young people in the system suffer from an inability to form healthy relationships, as well as extremely problematic behaviours. The young people usually either pose a risk to themselves, or others, or both, through aggressive and disruptive behaviour and severe self-harming. For example, we were told of a girl in a Secure Children's Home (SCH) who 'ingested cleaning fluid, cut herself and inserted objects into her cuts, pulled out clumps of her hair and threw herself against the wall causing injury, and deliberately said horrible things about the other young people so that they do not like her.'<sup>1</sup>

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<sup>1</sup> Moore, M (2014) "They helped me, they supported me" Achieving outcomes and Value for Money in Secure children's homes. Justice Studio and the Secure Action Network. p. 22

a)

- 3.3 The characteristics of those entering the justice system have remained fairly consistent since it was created in the 19<sup>th</sup> century. Regardless of what they are sentenced for, they come from backgrounds that are characterised by: sexual, physical or emotional abuse; neglect; domestic violence; family substance misuse and addiction; bereavements; and abandonment or loss.
- 3.4 A good example of a young person in the secure estate is Mike.<sup>2</sup> Aged 15, his mother had a history of serious substance misuse, taking cocaine and heroin. The oldest of three siblings, he witnesses domestic violence from an early age from his mother's partners. His step-father, who he formed a good relationship with, was shot and killed in front of him. He and his best friend used to throw bricks at each other's faces for fun. This resulted in the loss of his teeth and abscesses forming in his mouth which were never treated. He came into local authority care at the age of 12, and from there, at age 13, he began taking drugs such as ecstasy and became involved in an older criminal peer group.<sup>3</sup>

b)

- 3.5 Overall, children and young people of colour receive the worst treatment from the criminal justice system. The Lammy Review identified that 24% of first time entrants to the Youth Justice system, and 54% of the remand population, and 45% of those sentenced were children and young people of colour.<sup>4</sup> In SCHs we found that Black and Minority Ethnic (BME) groups were overrepresented in both welfare and justice placements but particularly justice placements where the ratio of White British to BME groups was 50:50.<sup>5</sup> The youth custody report for July 2019 shows that the number of children and young people of colour in custody has increased to 56% since the. So things are getting worse.

c)

- 3.6 Although there have been some positive pockets of activity with regards to diversion, punishment still dominates the system. More could be done, the majority of children who commit an offence will never offend again: 90% of the children who come into conflict with the law globally are first-time offenders, and 80% of these children will never offend again.<sup>6</sup>

d)

- 3.7 At the age of 10, our age of criminal responsibility is embarrassingly low.
- 3.8 Our age of criminal responsibility compares badly to the world. Afghanistan's age of criminal responsibility, for example, is 13. Our study of EU countries found the most common age of responsibility is 14 (13 countries), followed by 15 (4 countries). Portugal and Luxemburg have set it at 16.<sup>7</sup>
- 3.9 We do not comply with UN international standards. The new Convention on the Rights of the Child (UNCRC) General Comment No. 24 on (replacing General Comment No. 10: 2007) says:

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<sup>2</sup> Not his real name

<sup>3</sup> Moore, M (2014) "They helped me, they supported me" Achieving outcomes and Value for Monday in Secure children's homes. Justice Studio and the Secure Action Network. p. 29

<sup>4</sup> MOJ (2018) Tackling Racial Disparity in the Criminal Justice System: 2018 Update. Ministry of Justice. October 2018

<sup>5</sup> Moore, M (2014) "They helped me, they supported me" Achieving outcomes and Value for Monday in Secure children's homes. Justice Studio and the Secure Action Network. p. 15

<sup>6</sup> AIHRC & UNICEF (2008). Justice for children: The situation of children in conflict with the law in Afghanistan.

<sup>7</sup> Unpublished mapping study of EU countries for UNICEF Turkey by Justice Studio in 2017

States parties are encouraged to increase their minimum age to at least 14 years of age. At the same time, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age.<sup>8</sup>

- 3.10 The fact that our age of criminal responsibility is left at 10 owes to a historical mistake. In *The Child, The Family and the Young Offender*, in 1965, the Government suggested that the age sixteen would be a better age of criminal responsibility because 'children should be spared the stigma of criminality'.<sup>9</sup> The 1969 Children and Young Persons Act, raised the age of criminal responsibility to 14, but was never implemented. As such it remained at 10 along with the principle of 'doli incapax' which had remained from the 14<sup>th</sup> century, enshrining the presumption that those under 14 were incapable of criminal intent. This was removed by the Labour Government in the 1998 Crime and Disorder Act, leaving us with the starkest presumption of child criminal intent for centuries.
- 3.11 We have been regressing rather than progressing. Justice Studio's belief is that the age of criminal responsibility should be raised to 16, as suggested in 1965. This would make the UK as progressive as our neighbouring Scandinavian countries on this front.

#### 4. Suitability of the Secure Estate

- 4.1 Whist provision differs across the three different types of institution, (SCHs, Secure Training Centres (STCs) and Youth Offending Institutions (YOIs), in general, it is absolutely not a place that any parent would want to see their child.
- 4.2 YOIs are prisons, connected with the adult prison estate and undoubtably not a fit or proper for children or young people. As researchers, we have felt unsafe going into YOIs to undertake our work, and so we cannot imagine how horrible an experience it is for the young people themselves.
- 4.3 Our view is that custody is a trauma. Unless the child or young persons' outside life is so appalling that they find being housed in the secure estate to be preferable than their outside life, it is an experience that harms rather than helps. The, high prevalence and incidence of suicide, attempted suicide, bullying, self-harm and mental health problems amongst children and young people held in custodial establishments' proves how traumatic it is.<sup>10</sup>

##### a)

- 4.4 As the numbers of young people in the secure estate has got smaller, there is a higher concentration of those with more complex needs, and on longer sentences. The young people who remain in the system require support rather than just management. However, the secure estate has been designed to contain, rather than positively support them, and even then it struggles. Often, recourse is to ship those it cannot manage from institution to institution. It is clear that the secure estate has never been designed or staffed appropriately for the population it is meant to serve.

##### b)

- 4.5 Good provision demands safety as a baseline and then a positive environment, motivated and highly trained staff and targeted treatment. Rather than fit the children and young people into a set and rigid mould, provision must be flexible enough to provide wrap-around support in a holistic environment. Staff must be there in high ratios and embody

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<sup>8</sup> UNCRC General Comment No. 24 (201x) Children's rights in juvenile justice

<sup>9</sup> The Home Office (1965) *The Child, The Family and the Young Offender*. London, Her Majesty's Stationary Office p.5

<sup>10</sup> The Council of Europe Commentary on Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

'pro-social modelling' techniques to ensure every aspect of a young person's behaviour is both positively recognised and challenged where appropriate. There needs to be a genuinely therapeutic environment with dedicated mental health professionals providing therapy directly to the young people and staff. The closest example we have in England and Wales of good quality custodial provision is the SCH model.

- 4.6 The best models for child custodial placements are abroad. We witnessed better custodial arrangements that are integrated into the community and open. For example, Portugal and Spain have a number of different types of regime:

**Closed regime:** Young people live in the centre where they carry out the activities that include education, schooling, training, employment and leisure.

**Semi-open regime:** Young people live at the centre, but are able to undertake certain activities such as education, schooling, training, employment and leisure, outside of the centre.

**Open regime:** Young people carry out all their activities outside of the centre, whilst the centre remains as their home residence.

**Weekend custody:** Young people remain at home or at a centre for a maximum of 36 hours between Friday afternoon or evening and Sunday evening.<sup>11</sup>

In contrast, all of our current custodial regimes are closed, with only the occasional use of Release on Temporary Licence (ROTL). We need to realise that it is both possible and desirable to completely re-think the way our secure estate for children operates.

c)

- 4.7 We would argue that the physicality of the secure estate needs to do much more than simply 'hold' young people. It needs to actively look after, nourish and inspire them. None of the current physical environments do that.
- 4.8 The physical environment of the secure estate inculcates a sense of anxiety. YOIs are the worst. They are smaller versions of regular male adult prisons and have the same large blocks with small cells, open landings or narrow corridors, bars on the windows and on the doors. The sites usually have minimal outside space or greenery and young people are generally 'behind their door', as in adults' prisons, the majority of the time. STCs are smaller and slightly more like an intense, and oppressive, closed school. SCHs are usually much smaller and more homely.

d)

- 4.9 Staff training and support varies depending on if it is a YOI, STC or SCH, however in general, the youth justice workforce do not get the training, support, remuneration, or status that they deserve.
- 4.10 Staff in SCHs have the most training and desire to work with children.<sup>12</sup> The people that staff YOIs are prison officers. Whilst they should receive JASP (Juvenile Awareness Staff Programme), a 7 day training course, our experience is that this is rare and confined to those working on specialist units. Further, because many prison officers working in YOIs have not expressed a desire to work with young people, and know that promotion routes are only via the adult estate, there is insufficient motivation to want to specialise in working with them. This structure shows how little recognised and valued working with young

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<sup>11</sup> Unpublished report for UNICEF Turkey, Moore, M (2017) Probation and assessment in sex EU countries and in Turkey. P. 53

<sup>12</sup> Moore, M (2014) "They helped me, they supported me" Achieving outcomes and Value for Money in Secure children's homes. Justice Studio and the Secure Action Network. p. 28

people in the secure estate is. This impacts on the pride that staff may feel about their work and subsequently in the adequacy of the support they are able to provide to the children and young people.

- 4.11 Working with children and young people with severe needs is extremely stressful and our view is that all people working in the secure estate should receive clinical supervision from a trained psychologist. It is a massive oversight that staff are not effectively supported to deal with those in their care. The result is burnout, high turnover and a greater likelihood that staff will abuse rather than protect the children.

e)

- 4.12 The biggest barrier to providing safe and decent accommodation in the youth secure estate is insufficient government will, and the foolhardy emphasis on saving money, and being shown to be taking action, in the short term, at the expense of longer-term impacts and costs (both monetarily and socially). SCHs are the safest and yet their beds are underutilised. The secure estate needs a fearless, clear, evidenced, long-term, strategy.

f)

- 4.13 Having witnessed the physical restraint of a young person in a YOI by four prison officers who ran from all corners of the room to restrain him, and having heard his screams, we cannot believe that the use of force in the secure estate is proportionate and properly monitored. The abuses were also seen very clearly in the TV documentary of Medway and we do not believe that they are exceptional.

- 4.14 The continued use of the Minimising and Managing Physical Restraint should not be acceptable as it includes inflicting pain. The Children Act 1989 Guidance does not allow any children's homes to deliberately inflict pain on a young person as part of a restraint technique, as such, why would it be acceptable in the secure estate? Non pain-inducing restraint techniques should be used in all instances.

g)

- 4.15 SCHs are by far the safest type of secure provision and as such it is imperative that, as Charlie Taylor recommended, secure schools should only ever replace YOIs and STCs and not SCHs.

- 4.16 Apart from the lessons mentioned above, the secure schools must recognise that most young people in the secure estate do not identify as learners. Therefore, if they are to truly embed education, they must first understand that the delivery of an education is dependant on the teachers understanding of, and their ability to respond to, the young people's extra-educational needs. Education should be individualised and coordinated with the clinical psychology teams. The whole team must aim high for the young people and help them to see that they can achieve.

## 5. Resettlement and rehabilitation children and young people

- 5.1 We have one of the worst reoffending rates in Europe. This is partly because our custodial provision is inhumane and creating more anger, trauma and disaffection in the young people who are housed there. It is partly because custody is so far from their homes as to be completely alien, and any meaningful work done is untransferable to a community context. It is also partly because there is insufficient join-up and connection between the secure estate and services in the community. Ideally any custodial placement should be within communities not far away from them.

a)

5.2 Our experience is that in mainstream YOIs there is insufficient access to purposeful activity, education healthcare and other support. In SCHs we found that they are able to access education and healthcare as well as other support. In general, the young people leave an SCH with a rise in attainment of Maths and in English and benefit from support fostering empathy and remorse.<sup>13</sup>

b)

5.3 Sadly, this group of young people are hot potatoes: each service tends to want to pass the buck to someone else, each one is relieved when they no longer have to look after them, and peeved when it's their turn to do so again. As such, our opinion is that collaboration could, and should, be greatly improved between all of these services. However, there also needs to be sufficient funding to enable each service to be able to do their job properly. All are suffering from the austerity cuts, and this is passed on to the children and young people who are suffering even more.

c)

5.4 Young people in the secure estate are often transferred or realised immediately with no planning or coordination. As such, many children and young people will not have basic things such as a home and/or a guardian or school placement when they are released. As an SCH manager told us, 'we still get local authorities who can't find anywhere for them to move on to as they are reaching the end of their sentence.'<sup>14</sup> This doesn't need to be the case.

d)

5.5 There are virtually no mechanisms for transfer. When our Director undertook an evaluation of young people on long term sentences for the YJB it was clear that the transition was not planned, with 12 out of 15 young people saying that they had received little or no preparation for their move. In many cases this appeared to be a deliberate policy not to tell the young person they were being moved to the adult estate in case their behaviour deteriorated.

5.6 The majority (8 out of 15) of young people were told on the day they were transitioning that they were to pack their bags and move. As one young person said, 'I was at the gym, they came over and said "you're moving" I didn't get to say bye or nothing, just packed and came straight here.'<sup>15</sup> Others said it happened so fast their family, teachers, and psychologists didn't know they had moved. The young people in the evaluation asked for:

- More warning before the physical move
- Some information on how the adult estate works
- Some influence over the choice of establishment
- To be talked to by someone who is already in the adult estate

We would add that there needs to be proper sentence planning and communication between establishments. Transition planning should be a collaborative process with the young person with proper consideration for their education, vocational activities, offending behaviour programmes, psychological input and other specific needs.

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<sup>13</sup> Moore, M (2014) "They helped me, they supported me" Achieving outcomes and Value for Monday in Secure children's homes. Justice Studio and the Secure Action Network. p. 48

<sup>14</sup> Moore, M (2014) "They helped me, they supported me" Achieving outcomes and Value for Monday in Secure children's homes. Justice Studio and the Secure Action Network. p.59

<sup>15</sup> Unpublished Long version of Cordis Bright (2011) Evaluation of Long-term Units at HMYOI Ashfield, Wetherby and Warren Hill. Youth Justice Board for England and Wales authored by M. Moore p. 70

5.7 Since '*Transforming Management of Young Adults in Custody*' in 2013, there has been a gradual move to place young people transitioning into young adults not into 18-21 prisons but straight into the adult prison. This means that young men will go from a YOI to an adult prison and the transition is even more extreme for young women who will go straight from an SCH to an adult women's prison. Young people should not be going directly to the adult estate.