



Twisted:

The use of force on children in custody

the Howard League for Penal Reform

There are around 2,000 children in custody at any one time in England and Wales – more than in any other country in Western Europe. Physical force is routinely used - sometimes with disastrous effect. In April 2004, 15 year old Gareth Myatt died following restraint by staff at Rainsbrook secure training centre (STC). Four months later, 14 year old Adam Rickwood was found hanging in his cell after he had been restrained by staff at Hassockfield STC. He was the youngest child to die in penal custody in the last 25 years. In January 2011, following a second inquest, a jury found that before and at the time of Adam's death, there was a serious system failure in relation to the use of restraint at Hassockfield, giving rise to an unlawful regime. The jury also found that the restraint was a contributing factor to his death.

This briefing examines the sanctioned use of force on children in custody and includes evidence from legal statements made by young people and used here with their consent. The briefing has been produced by the Howard League legal team which represents

children and young adults in custody. The legal service is supported by the Big Lottery Fund as part of U R Boss, a five year national programme of participation opportunities and support for young people in custody and recently released into the community.

What is restraint?

Restraint is the generic term for the authorised use of force on people in institutions such as care homes, hospitals and secure facilities. There are several different definitions of restraint. Restraint can range from actual physical force to the use of instructions that restrict movement. The Mental Capacity Act 2005 states that *'someone is using restraint if they use force – or threaten to use force – to make someone do something they are resisting, or restrict a person's freedom of movement, whether they are resisting or not'*.



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Restraint can only take place in strictly prescribed circumstances. Whenever it is used it must be the least restrictive option, involve the least amount of force necessary and be used for the shortest possible time.

In some circumstances restraint might be the right thing to do: sometimes failure to restrain may be considered neglect. In almost all circumstances where restraint can be used, there are specific laws and guidance governing its use. These rules generally require that restraint should only be used to stop somebody from suffering serious harm. In most scenarios there are specific authorised methods.

Methods of restraint

There are two broad categories of restraint: those that cause pain and those that attempt to avoid causing pain.

In the children's secure estate, the two most common methods of restraint are 'control and restraint' (C&R) and Physical control in care (PCC). The government is currently in the process of rolling out a single method to be used across the estate called Conflict Resolution Technique (CRT).

C&R is used in Young Offenders' Institutions (YOIs) for boys aged between 15 and 18 and 17 year old girls. It is designed for adults and is a pain compliant technique, which immobilises the arms by employing joint locks using wrist flexion. It is designed for use by a minimum of three members of staff. Training is compulsory for the prison officers and refreshed at least annually by approved trainers.

PCC is used in secure training centres (STCs) for boys and girls aged between 12 and 18, although older children are generally only placed there if they are assessed as vulnerable. It is designed by the Prison Service. It is described as non-pain compliant. However, if it becomes necessary to gain control during the procedure the method authorises "distraction" techniques which cause pain to the young person. The initial training lasts four days with a refresher at a minimum of every six months.

PCC is controversial as its use has been associated with the death of two children. As a result of legal action by Children's Rights Alliance for England (CRAE), the "secret" PCC manual (Ministry of Justice 2010) was finally disclosed in July 2010. The manual revealed that staff were authorised to use pain-inflicting distraction techniques including:

- **thumb** – fingers are used to bend the upper joint of the thumb forwards and down towards the palm of the hand;
- **ribs** – involves the inward and upward motion of the knuckles into the back of the child exerting pressure on the lower rib; and

- **nose** – staff use the outside of their hand in an upward motion on the septum.

The aim of the Conflict Resolution Technique, which is to replace PCC and C&R, is to provide staff working with young people within the justice sector with professional strategies and a range of accredited physical techniques which are simple, safer, and more effective when managing conflict and violence in the workplace. However, this method is designed to cause pain.

The statistics

In a joint review of the experiences of children in custody, Her Majesty's Inspectorate of Prisons and the Youth Justice Board (HMIP and the Youth Justice Board, 2010a) found that a third of boys and a quarter of girls in prisons had been physically restrained. The report also found that black boys were disproportionately more likely to be restrained by staff than white boys.

According to the Youth Justice Board (2011) there were 6,904 incidents of (reported) restraint in 2009/2010, of which 257 resulted in injury. The average proportion of young people in custody who were restrained increased from 11 per cent in 08/09 to 12 per cent in 09/10. 11 per cent of boys were restrained and 18 per cent of girls.

Restraint statistics are likely to be an underestimate as it is unclear whether all restraints are recorded. Young people have frequently told our legal team that they have been restrained where subsequent inquiries fail to show any record of a restraint. The figures also fail to show whether restraints were used on particular children on more than one occasion. Young people who contact our legal team often complain of being restrained repeatedly.

Inquiries, reviews and concerns

Death, serious injury and concerns about the improper use of restraint have led to inquests, inquiries and reviews of how we treat children in custody. The Children's Rights Alliance (2010) has set out a chronology of key dates and events since 1992.

In January 2006 the Howard League for Penal Reform (2006a) published an independent inquiry by Lord Carlile of Berriew QC which investigated the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes. Lord Carlile recommended that restraint should never be used as a punishment or to secure compliance and that there should be one certified physical intervention technique that was safe for children. He concluded that resort to restraint was a failure to de-escalate conflict and the infliction of pain was not acceptable and may be unlawful. He deplored the use of mechanical restraints,

like handcuffs. Lord Carlile highlighted that many of the young people had suffered serious violence and abuse in the past and needed help to understand that they may make complaints without reprisal.

The Minister for Justice and the Minister for Children commissioned Peter Smallridge and Andrew Williamson (2008) to conduct an Independent Review Of Restraint In Juvenile Secure Settings. The government asked the review to analyse the policy and practice on the use of restraint across a range of secure settings for children including STCs, Secure Children's Homes and YOIs. The review made a total of 58 recommendations to which the government responded (Ministry of Justice and Department for Children, Schools and Families, 2008).

Smallridge and Williamson observed: "The degree of violence and abuse to which many of these young people have been subjected in their short lives ... is of huge concern to a civilised society...We learned very early on in the review that there is no such thing as 'entirely safe' restraint. Restraint is intrinsically unsafe. Even where it does not end in physical injury the experience and the memory can be profoundly damaging psychologically" (Smallridge and Williamson, 2008 pp4-5)

Smallridge and Williamson (ibid) recommended that a system of restraint should be based on the principle that force would only be used within an approved system and only as a last resort. When it is used it should amount to the minimum force required to prevent harm. The system should be accredited and used consistently across settings within the context of an overall approach to behaviour management, including de-escalation and de-briefing, in which children and young people are actively involved. An Accreditation Panel should be set up including experts drawn from a range of disciplines including physiotherapy, paediatrics, child psychiatry and orthopaedics, together with those with operational knowledge of restraint techniques.

A restraint accreditation board, chaired by Professor Susan Bailey, has been established to advise on the methods of restraint accredited for use in secure custody.

Our legal service

The Howard League for Penal Reform's legal team provide free, independent and confidential advice, assistance and representation on a wide range of issues to young people under 21 who are in prisons or secure children's homes and secure training centres. Young people can call us free of charge on our advice line.

Children and their carers frequently contact us with concerns about inappropriate use of force in detention. Children have complained that they have

been assaulted, slapped and strangled during so called restraint scenarios. They have also complained that the threat of restraint is routinely used to enforce discipline in custody or that they are provoked into situations where restraint becomes necessary.

Silenced

Young people in custody routinely struggle to access justice; they tend to have only come across criminal practitioners who may have limited knowledge of prison law, public law or community care law. Young people in custody often view the law as something that is there to punish them; many remain unaware of their legal rights or potential legal remedies. Even if they are aware of their right to legal help, they are often unable to access it. Young people in custody are especially vulnerable to the arbitrary abuses of power that Lord Woolf (1991) recognised as so prevalent within the prison system.

Children are often particularly reluctant to pursue complaints about their treatment in detention. In 2010 our legal team spoke to a 14 year old boy who had been slapped in the face by a member of staff in the course of a restraint. He did not wish to pursue a complaint because he felt that *'no one would listen'* to him anyway. Another young person told us that *'the complaint system does not work. Even if the complaint gets upheld, nothing ever happens. The gobs [governors/staff] stick together. One time an officer was told off for being racist and was told to go on a diversity course. The officer refused – nothing happened.'*

Other young people have been reluctant to pursue complaints while they are in the establishment for fear of reprisals. Several young people have told our lawyers that they have been restrained while attempting to stop other young people from being restrained unfairly.

Blocked and rebuffed

Where young people do complain about their treatment, even with the help of experienced lawyers, it is often extremely difficult to get disclosure of the evidence or a formal detailed response from institutions. This process can take years and usually results in documents that are so heavily redacted that it is difficult to ascertain what they record. Complaints are rarely progressed or upheld. Even where the institution admits poor or unlawful behaviour or the relevant member of staff has been disciplined for the restraint, our lawyers have never, despite requests, received a formal apology for our clients.

Ruling with violence: Do as you are told or you will be twisted up...

A young person who had been in an STC and three YOIs told our lawyers *"Anywhere you go, the gobs will happily twist you up because they know they can do it and we can't do anything about it."*

Many children have told our lawyers that the threat of restraint is routinely used to make them do what they are told. This accords with regular findings from HMIP reports (HMIP, 2008 and 2010b, c and d) that in several YOIs, force was being used inappropriately to secure compliance with staff instructions.

Young people have complained that this includes threats to make them do basic things such as going to bed or back to their rooms or cells.

"I remember once two men pulled me across the room by my arms when I refused to go to bed. They pulled me down onto the floor and my arm must have got all twisted up. I think I ended up falling onto my hands."

15 year old boy, STC

"I have been PCC'd loads of times here because I would not go to my room. It ends being a restraint situation when staff tried to grab me to make me go to my room. I don't like being grabbed and so I often push them away or shrug them off. When I shrug them off they tend to restrain me. This has happened loads of times."

15 year old girl, STC

Other young people have told our lawyers that officers threaten violence to punish young people who misbehave. The threat of violence is an assault in English law.

"The night before, I was angry that officers... had been laughing at me and wouldn't let me out for association. This really wound me up and I sat in my cell feeling angry and upset. Later that evening I smashed up my cell...The next morning, one of the officers spoke to me through my door and said that they were 'going to make me scream later'. Some officers here seem to like twisting people up and seem to use it as a punishment even though that's what 'governor's' [prison adjudications] are for."

17 year old boy, YOI

Broken bones and bruises

Our lawyers have represented and helped children who have suffered from broken bones including broken wrists, elbows, teeth knocked out and bruises all over their bodies. There were 142 injuries recorded as a result of restraint on boys in YOIs between April 2008 and March 2009. For the period April 2007 and March 2009, 101 injuries were sustained by children during restraint at Medway STC. The injuries included cuts, scratches, nosebleeds, bruising and sprains (Hansard, 2010).

"While I was being held to the floor by three officers, the officer holding my left arm took the arm from under me and placed it behind me straight out. It was while my left arm was in this position that I felt a hit to

the elbow. It was a quick, direct hit which felt different from just the application of pressure and it hurt. I felt an immediate sharp pain."

15 year old boy, YOI

Many young people have also complained that the restraint has continued long after the young person has ceased to struggle.

"I also had bruised shoulders from when one of the staff dragged me across the room and shoved me into the wall. I had bruising on my back from where I was slammed into the wall in my cell."

15 year old boy, STC

Where restraints are necessary and appropriate, there are very clear authorised methods. If restraints are carried out properly these kinds of injuries should never occur. Their presence suggests that the children have been assaulted rather than restrained.

"Several times while I was being restrained, they deliberately hurt me by bending my thumb down so that it touched my forearm. This was really painful. I often had bruises under my upper arms and scratches down my arms after PCC. I sometimes had panic attacks when I was in my room after a PCC."

14 year old boy, STC

"I see young people getting restrained all the time in YOI's. Sometimes you can see young people getting beaten up by the gov's. If no one is watching, they can really hurt you. They will punch you and knee you."

19 year old boy, YOI

Similar incidents are described in chapter 3 of the Smallridge and Williamson (2008) report, including an incident where a young person alleged that an officer squeezed his testicles in the course of a restraint. Upon the publication of the Carlile Inquiry into restraint published by the Howard League for Penal Reform (2006a), Lord Carlile stated that the Inquiry "found that some of the treatment children in custody experience would in another setting be considered abusive and could trigger a child protection investigation. If children in custody are expected to learn to behave well, they have to be treated well and the staff and various authorities have to set the very highest standards" (Howard League 2006b). Our lawyers have found that child protection referrals are rarely made when children are restrained and, even when they are made, their outcomes are often unclear or not properly reported to the child and his or her carers. In fact, parents are often not promptly informed when their children are restrained including when they are injured in the process.

"One day, I arrived at the prison for a visit. I was horrified to see my son sitting there with a black eye."

None of the staff seemed to be commenting on it. I demanded to know immediately what had happened and I found out that he had been restrained two days before. I was furious that no-one had contacted me to tell me what had happened and that no child protection referral had been made."

Mother of a 16 year old boy in a YOI

Provocation and abuse

"Govs have so much power over us. I have seen govs wind up the quietest kids on the block so much that they assault them and then the young person gets restrained."

Boy, YOI

Our lawyers frequently find evidence that young people in detention are provoked or wound up by staff resulting in a situation where a member of staff believes a restraint can be technically justified.

"Staff would frequently grab my forearm very tightly with two hands and then try to drag me where they wanted me to go. They used a lot of force – I frequently had bruise marks from fingers on my arm. If I then moved my arm even a little they would say I was trying to assault them and they would then PCC me. They did this to other people too."

14 year old boy, STC

A 'persuasive touch and hold policy' is used in some STCs in order get children to comply with instructions. The policy attempts to distinguish this type of 'persuasive' contact from PCC by stating that PCC is carried out with the intention of overpowering a child altogether. This is not correct – even where PCC can be used, it is unlawful to use any more force than is necessary. The policy appears to authorise the use of force in circumstances where it is unlawful and in practice appears to provoke the unnecessary use of PCC. One young person described the operation of the policy to our lawyers:

"If you were being naughty the staff would say 'Do you want to come to your room?' If you didn't go they would grip you and take you so you had to go. Everyone was a bit frightened about this. When they got you to your room they would come in laughing as if it wasn't serious. Then they would grab hold of you and get you on your bed and make you struggle and then they would fight you"

15 year old boy, STC

In our experience the same young person will often be restrained many times. Frequent and institutionalised violence mirrors exactly the kind of abusive environment that some young people have previously experienced in the community. Restraint in detention can become part of a complex cycle of violence similar to that experienced by victims of domestic violence.

One 15 year old client told us that being restrained was the only physical contact she had in custody and sometimes made her feel better to the extent that she sometimes provoked it and therefore felt she could not complain about it.

"The thing about being restrained is if you have it too much, you get used to it - you get more attention when you are restrained and everyone knows you. You get to know the staff more. When you are good, staff forget you. After a while, you can use it to get your anger out and sometimes you can miss it – even though it is horrible."

15 year old girl, STC

Smallridge and Williamson (2008) report that the 'human contact' that restraint brings may encourage young people to actively seek restraints (p18). Some young people have told our lawyers that they feel inhibited from complaining about restraints where there is an element of this.

Appendix: The law and the use of force

The starting point is that any form of unwanted touching or even the threat of unwanted touching is a criminal offence of assault. This applies to all people over the age of 10 in the community and in detention. Where the force used was both necessary and reasonable to prevent the harm feared, it may amount to a complete defence (Criminal Law Act 1967, s3; Palmer v R [1971] AC 814, 831-2).

The use of force against children in detention does not fall outside the criminal law. In addition, there are specific rules that apply to staff in Secure Training Centres and Young Offenders' Institutions that set strict limits on the circumstances where force may be used on children. Rules 37 and 38 of the Secure Training Rules 1998 and Rule 50 of the Young Offenders' Institution Rules 2000 together only allow for the use of force:

- where it is proportionate and unprovoked
- when no alternative method is available

The STC Rules further restrict the use of force in STCs to where it is necessary to prevent [the child's]:

- escape
- injury
- injury of others
- damage to property
- or incitement of another

The Courts have held that PCC may not be used for ensuring "good order and discipline" (R (C) v Secretary of State for Justice [2009] QB 657).

All techniques used must be approved by the Secretary of State. Both systems of force against children in STCs and YOIs involve the use of inflicting pain. The CR technique incorporates pain as a method of securing compliance while PCC authorises painful holds to enable officers to regain control of a situation where force alone is insufficient.

The European Convention on Human Rights further protects children in detention from inhuman or degrading treatment or punishment. The United Nations Convention on the Rights of the Child requires governments to ensure that for every child deprived of their liberty they 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.

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the Howard League for Penal Reform

1 Ardleigh Road
London
N1 4HS

t
f
e
w

020 7249 7373
020 7249 7788
info@howardleague.org
www.howardleague.org

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