



COMMISSIONER FOR HUMAN RIGHTS

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MEMORANDUM

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

Following his visits to the United Kingdom
5-8 February and 31 March-2 April 2008

Issue reviewed:
Rights of the child with focus on juvenile justice

Executive Summary

Commissioner Thomas Hammarberg and his delegation visited the United Kingdom from 5 to 8 February and from 31 March to 2 April 2008. The Commissioner held discussions with State authorities and non-governmental organizations on certain human rights issues, including juvenile justice and specifically the situation of children in custody. He visited a number of institutions including the *Oakhill Secure Training Centre* and the *Young Offender Institution Huntercombe*. Among the State authorities contacted were Mr. David Hanson, Minister of State (Ministry of Justice) and Mr. Ed Balls, Secretary of State (Department for Children, Schools and Families).

Generally, the Commissioner welcomed the increased cooperation between different Ministries concerned with children's well-being and the publication of the '*Children's Plan. Building brighter futures*'. He subsequently welcomed the publication of the *Youth Crime Action Plan* in July 2008. The Commissioner noted the consultation process on the possible removal of the UK reservation on immigration and nationality to the Convention on the Rights of the Child and was happy later to be able to welcome the recent decision of the UK government to withdraw its immigration reservation and its reservation relating to article 37c (children in custody with adults).

In more detail, the Commissioner focused on the following major issues relating to juvenile justice system in the UK:

- I. **The age of criminal responsibility and the child custody system in the UK:** Noting the very low age of criminal responsibility in the UK, the Commissioner recommends that the Government considerably increase the age of criminal responsibility to bring it in line with the rest of Europe, where the average age of criminal responsibility is 14 or 15.

While the Commissioner commends the authorities' efforts to focus on prevention and early targeted family-based intervention in order to reduce the number of children offending the law, the Commissioner is concerned about the overuse of child detention in the UK and the high numbers of children in custody in England and Wales. Of particular concern is the fact that the majority of children in custody (83%) are in one of 18 young offender institutions (YOIs). The Commissioner's position is that the arrest and detention of children and the use of child custody must be a last resort and for the shortest appropriate period of time. In this regard he welcomes the new Criminal Justice and Immigration Act which includes a Youth Rehabilitation Order enabling the courts to select from a full range of community interventions when sentencing young people. The Commissioner considers this as an acknowledgement by the UK authorities of the principle of detention as a last resort

- II. **Conditions in child custody including the use of restraints:** The Commissioner visited the premises of two child custody institutions and was generally satisfied with the conditions and the dedicated professional staff he met. However, he is concerned about the access to education and the mental health needs of children in child custody. The Commissioner recommends that local authorities are given full responsibility for ensuring the provision of educational and health services to children in detention and that local authorities cover the costs and assume all of their legal responsibilities for children held there.

The Commissioner urges the immediate discontinuation of all methods of restraint that aim to inflict deliberate pain on children (among which physical restraints, forcible strip-searching and solitary confinement). The UK Government must as a matter of urgency ensure that corporal punishment is explicitly prohibited in all custodial settings and is reminded in this respect of its obligations to protect children from all forms of harm and ill-treatment, under Article 19 of the Convention on the Rights of the Child and Article 3 of the ECHR. The Commissioner commends the government for suspending the use of the "nose distraction technique" and the "double basket hold" but urges for discontinuation of all methods.

- III. **Resettlement and re-offending:** The Commissioner is highly concerned about the high re-offending rates in the UK: 76% of the children being released from a Youth Offender Institution re-offend within a year. This should raise serious questions about the efficacy and purpose of the entire youth justice system in England and Wales and the use of detention in particular.

The Commissioner has noted the UK Government's commitment to resettlement of young offenders as an important part of the custodial sentence and he stresses the crucial role local authorities play in providing services and support for children. However, there is a discrepancy between what the law prescribes and the availability and quality of services currently delivered. He was encouraged to hear the authorities explicitly stating that local authorities should improve their services and for that reason "performance indicators" are now being prepared as well as the introduction of a "statutory duty" for local authorities to improve resettlement services. Welfare and care should be the two main priorities for children who leave a child custody institution.

The Commissioner recommends that there should be an overall examination of the situation of children in custody with a view to reducing numbers, and assessing the respect for the rights of children in detention including protection, education, health, rehabilitation and complaints and advocacy mechanisms.

The UK authorities' response is appended to the present Memorandum.

I. Introduction

1. This Memorandum is based on two visits to the United Kingdom by the Commissioner for Human Rights (the Commissioner) on 5-8 February and 31 March-2 April 2008, during which he held discussions with State authorities and non-governmental organizations on certain human rights issues.¹ This Memorandum deals with one aspect of children's human rights, namely juvenile justice, in the United Kingdom. In this context the Commissioner also visited two institutions where children are detained.
2. The Commissioner notes and welcomes the increased cooperation between different Ministries concerned with children's well-being and the recent publication of the '*Children's Plan. Building brighter futures*' with its references to the Convention on the Rights of the Child. The Commissioner also notes and welcomes the rights-based national plans adopted by the devolved administrations in Northern Ireland and Wales.² The Commissioner agrees with Minister Ed Balls' position that a child-rights based approach is needed to improve the overall well-being of children.
3. The Commissioner welcomes the announcement on 23 September 2008 of the UK government to withdraw its immigration reservation and its reservation relating to children in custody (article 37c) of the Convention on the Rights of the Child.³

¹ During his first visit the Commissioner was accompanied by his Advisor Mr Dennis van der Veur and his Personal Assistant Ms. Sandra Ferreira; during his second contact visit the Commissioner was accompanied by his Advisors Mr. Nikolaos Sitaropoulos and Mr. Dennis van der Veur.

² UK Government (2007) The Consolidated 3rd and 4th Periodic report to the UN Committee on the Rights of the Child, paragraphs 31 and 34. Since the Commissioner has not visited Northern Ireland and Wales during the two missions he is only able to refer to main developments in Northern Ireland and Wales.

³ Article 37(c) reads: '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. The UK reservation to Article 37(c)

4. The Commissioner also welcomes the UK's intention to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography by the end of 2008, subject to parliamentary approval.
5. Since preparation of this Memorandum, the Committee on the Rights of the Child in its recent observations on the UK expressed its appreciation for 'the State party's efforts to harmonize its legislation with the Convention(...). However, the Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it'. It further noted 'that the principle of the best interests of the child is still not reflected as a primary consideration in all legislative and policy matters affecting children, *especially in the area of juvenile justice (...)*' and urged the UK to fully implement international standards relating to juvenile justice.⁴

II. Children in custody

A. International framework and standards

6. International law places a number of specific human rights obligations on States in relation to children in conflict with the law.⁵ The arrest, detention and use of child custody must be a last resort and for the shortest appropriate period of time. The focus of interventions must be on meeting the child's needs and positive rehabilitation. In the few cases where deprivation of liberty is necessary, children must be treated humanely with respect for their human dignity and worth and their rights recognized and upheld.
7. In this respect the Commissioner draws attention to the concerns relating to the high numbers of children in custody, and the use of painful methods of restraint, raised during the recent universal periodic review of the UK conducted by the United Nations Human Rights Council.⁶ He notes the recommendations of the United Nations Secretary-General's Study on Violence against Children. He further notes the recent recommendations of the Human Rights Committee in relation to the use of anti-social behaviour orders on children.⁷ He is also aware of the observations and conclusions of the European Committee of Social Rights in 2005.⁸ Finally, he notes the recommendations of the Committee on the Rights of

stated that "where at any time there is a lack of suitable accommodation or adequate facilities for a particular individual in any institution in which young offenders are detained, the UK reserves the right not to apply article 37(c) in so far as those provisions require children who are detained to be accommodated separately from adults."

⁴ Committee on the Rights of the Child, concluding observations on the UK's third and fourth periodic report, 3 October 2008, CRC/C/GBR/CO/4, par. 10 and par. 26.

⁵ In addition to the Convention on the Rights of the Child, the following three international human rights instruments are of particular importance: the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985); the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990); and the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990).

⁶ Human Rights Council Working Group on the Universal Periodic Review First session Geneva, 7-18 April 2008 Report of the working group on the universal periodic review. United Kingdom of Great Britain and Northern Ireland.

⁷ Human Rights Committee, concluding observations on the UK's sixth periodic report, 30 July 2008, CCPR/C/GBR/CO/6

⁸ European Committee of Social Rights, Conclusions XVII-2, July 2005.

the Child, in its 2008 concluding observations on the UK and its general comments, in particular general comments no. 8⁹ and no. 10.¹⁰

B. The age of criminal responsibility and the child custody system in the UK

8. The age of criminal responsibility is very low in the UK (ten in England, Wales and Northern Ireland and eight in Scotland). The Committee on the Rights of the Child has on three separate occasions recommended the UK's age of criminal responsibility be increased.¹¹ The Commissioner notes the average age of criminal responsibility across Europe is between 14 and 16, and in some states it is 18.¹² Academic experts have observed that in jurisdictions where the age of criminal responsibility is higher no negative consequences ensue in terms of juvenile crime rates.¹³ The European Social Rights Committee in 2005 declared the UK to be in breach of Article 17 of the European Social Charter because the age of criminal responsibility in the UK is 'manifestly too low'.¹⁴
9. The Youth Justice Board (YJB), established by the Crime and Disorder Act 1998, is an executive non-departmental public body consisting of 12 board members who are appointed by the Ministry of Justice. The YJB oversees the juvenile justice system in England and Wales. It works 'to prevent offending and reoffending by children and young people under the age of 18, and to ensure that custody for them is safe, secure, and addresses the causes of their offending behaviour'. The YJB determines which form of custody is appropriate for individual children sentenced to detention. This process includes a "vulnerability assessment". There are three types of institution where children can be detained:
 - There are 15 secure children's homes (SCH) which are run by local authorities and where the average age of children is between 12 and 14 years (with girls up to 16). Approximately 8% of all children in custody are detained in such institutions.
 - There are four secure training centres (STCs), which are "purpose built centres" for children up to the age of 17 (the youngest are 12, most are 14-16 years old) and are run by private contractors. Approximately 9% of children in custody are detained in STCs.
 - There are 18 young offender institutions (YOIs) holding children between the ages of 15 and 17. Approximately 83% of all children in custody are held in YOIs.
10. About a third of all children in custody are officially classified as vulnerable which, according to Youth Justice Board placement policy, means that they should be held in one of the

⁹ Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.

¹⁰ Committee on the Rights of the Child, General Comment No. 10 (2007), Children's rights in juvenile justice.

¹¹ Committee on the Rights of the Child, concluding observations on the UK's third and fourth periodic report, 3 October 2008, CRC/C/GBR/CO/4; Committee on the Rights of the Child, concluding observations on the UK's second periodic report, 9 October 2002, CRC/C/15/Add.188; Committee on the Rights of the Child, concluding observations on the UK's initial report, 15 February 1995, CRC/C/15/Add. 34

¹² The study '*Violence against children in conflict with the law. A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*', published in 2008 by Defence for Children International and the Howard League for Penal Reform, reports that the age of criminal responsibility varies in those countries between 10, 12 and 18 years. In France there is no set age.

¹³ See for example B. Goldson and J. Muncie (eds) (2006) '*Youth Crime and Justice*', London, Sage and B. Goldson and J. Muncie (2006) 'Rethinking Youth Justice: Comparative Analysis, International Human Rights and Research Evidence', *Youth Justice* (6)2: 91-106

¹⁴ European Committee of Social Rights, Conclusions XVII-2, July 2005

SCHs or STCs. However, during the mission the Commissioner learnt that vulnerable children are still being placed in YOIs and this has been confirmed by detailed research.¹⁵

11. According to official statistics provided by the Ministry of Justice, as of 29 February 2008, 2,883 children were held in custody in England and Wales: 2,422 in YOIs, 243 in STCs and 218 in SCHs.¹⁶ Despite the observations of the previous Commissioner for Human Rights in June 2005 that 'the high levels of youth detention would appear to suggest a lack of suitable alternatives' there has not been any significant reduction in the numbers of children in custody.¹⁷
12. The Commissioner welcomes the recently strengthened cooperation between the Department for Children, Schools and Families and the Ministry of Justice in preventing and responding to juvenile crime in a holistic manner. The Commissioner welcomes the publication of the youth crime action plan on 15 July, 2008.¹⁸

C. Conditions in child custody and visits to two institutions

13. Conditions in child custody in England have been the subject of much recent public and parliamentary debate, following the deaths of two children in STCs in 2004, an independent inquiry¹⁹, questioning by parliamentarians and a number of Freedom of Information Act disclosures. Inspection reports from the Chief Inspector of Prisons have raised concerns about children's safety in child custody settings. On some occasions the Chief Inspector has noted high levels of force against children and its consequences. In 2005 and 2007 a broad coalition of NGOs, the Children's Rights Alliance for England, wrote to the European Committee on the Prevention of Torture alerting it to the use of painful restraints in secure training centres.
14. The Commissioner had received worrying information about the safety and well-being of children in custody in the UK. For this reason, he decided to visit the Oakhill Secure Training Centre and the Young Offender Institution Huntercombe. His observations were subsequently discussed during meetings with Mr. David Hanson, Minister of State (Ministry of Justice), Mr. Ed Balls, Secretary of State (Department for Children, Schools and Families), Her Majesty's Chief Inspector of Prisons, Ms. Anne Owers and Ms. Frances Done of the YJB. The Commissioner also met with the Children's Rights Alliance for England.

Oakhill Secure Training Centre – Milton Keynes

15. The Commissioner visited Oakhill STC on 31 March. This centre opened in the summer of 2004. It is run by the private contractor *Group 4 Securicor*. A maximum number of 80 children (12-17 year-olds) can be detained in this STC though this number was reduced to

¹⁵ B. Goldson (2002) '*Vulnerable Inside: Children in Secure and Penal Settings*'. London: The Children's Society.

¹⁶ Letter Ministry of Justice/Department for children, schools and families, April 23, 2008.

¹⁷ There were only 55 less children detained in custody at the end of March 2008 compared with March 2007: see National Offender Management Service / Ministry of Justice Population in custody monthly tables for England and Wales, March 2007 and March 2008. Looking at overall reception numbers, there were 116 more children from England and Wales received into prison custody in 2006 than in 2005: Ministry of Justice Offender management caseload statistics 2006, Table 7.6 'Receptions into prison establishments under an immediate custodial sentence by age and sex'.

¹⁸ www.homeoffice.gov.uk/documents/youth-crime-action-plan/

¹⁹ The Lord Carlile of Berriew QC. An independent inquiry into 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. Howard League for Penal Reform (February 2006).

56 in September 2007. At the time of the visit, 56 children were held in Oakhill.²⁰ The total number of staff (contracted by G4S) was 250. The children live together in groups of eight. One member of staff is responsible for the observation of every eight children. The average period of detention is three to four months, though exceptionally children can be held in the centre for up to one year.

16. The children in Oakhill were characterised by the Director of Oakhill as 'difficult to handle' and from 'damaged chaotic family backgrounds'. Some of them have committed serious crimes. Many have psychiatric problems and incidents of self harm are common. 40% have drug addiction problems and 70% have a tendency to use drugs. There is an individual care plan for each child. It was reported that there are 12 social workers working in the centre. We were informed that most detained children remain within the care of local authorities. However, the small number of social workers working in the centre seems insufficient given the gravity of the problems of children detained there.
17. The Commissioner saw the health and the educational premises. The children have a fixed day schedule during the week. After waking up at 7.30am, children follow class from 9.15am till 4.30pm (with a lunch break in between). There is a visiting GP and 14 nurses, three of whom are trained in psychiatry.
18. The Commissioner was informed of difficult past experiences at Oakhill, also acknowledged by the YJB and the Minister. The Centre had faced a turbulent year of violent incidents and staff had been unable to handle situations, which led, among other things, to children being handcuffed. The Chief Inspector of Prisons concluded in this regard *that 'the scale of the centre's difficulties was illustrated most starkly by the staggering levels of use of force by staff, often in response to the all too frequent assaults by children on staff and on other children'* and *'It might be more realistic for the YJB to empty the centre briefly, so that it can be re-launched with a properly trained and reinvigorated staff...'*²¹
19. A new Director was put in place in July 2007, in an attempt to establish a more humane approach – to 'change the culture' at Oakhill. However, the Commissioner gained the impression that major problems remain in the institution and a child-focus is still absent. The Commissioner notes from the response of the UK Government that in May 2008 another Director was appointed.
20. Oakhill has had a high turnover of staff. The Director at the time of the visit was determined to retain competent staff. Nevertheless, concerns have been expressed that many staff have little experience in working with children with complex needs in institutional settings. All staff receive initial training for 7-8 weeks but there is no requirement for staff to hold professional pedagogic qualifications. The Commissioner notes that international standards place strong emphasis on ensuring staff dealing with children are professionally qualified and receive regular training, including in relation to protecting the rights of the child.²²

Young Offender Institution Huntercombe - Henley-on-Thames, Oxfordshire

21. The Commissioner visited YOI Huntercombe on 1 April. There were 333 boys held at the time of the visit (capacity 350).²³ The number of staff is currently 298. Huntercombe also

²⁰ Figures provided by the UK Government show that between March 2007 and February 2008 occupancy in Oakhill ranged from 41% (January 2008), 53% (August 2007) and 69% (September 2007 and February 2008).

²¹ Report on an announced inspection of the management, care and control of young people at Oakhill secure training centre 9-10 October 2007 by HM Chief Inspector of Prisons.

²² E.g. Rule 22 Beijing Rules; CRC General Comment Nos 5 and 10.

²³ Figures provided by the UK Government show that between March 2007 and February 2008 occupancy rates ranged from 80% (March 2007) to 100% (November 2007)

faces challenges related to staff turnover. According to the Director this is due to the 'good skills staff learn here', leading to better job offers (closer to London). Other factors, like high housing costs in the area, may also be an explanation.

22. The majority of children serve short sentences (between three to six months) at Huntercombe, usually for theft and similar crimes. Approximately 70 to 80 boys are convicted under Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 and three have indeterminate sentences. The Director of the YOI said that 80% of the boys do not create any problems for the staff.
23. The Commissioner saw the health and educational premises as well as several workshops where children can engage in productive activities and work towards a diploma (for example repairing cars/mechanical work). The Commissioner also spoke to some of the children who told him that the regime is generally acceptable, though there were complaints about the quantity and quality of food and the lack of weekend programmes. They were generally satisfied with the education offered (primarily English language and maths).
24. The Commissioner was briefed by the Director and his senior staff that during their stay at the YOI it is difficult to do any useful work with the children in order to prepare them for life after release from YOI. For example, due to a lack of funding no psychiatric interventions can be made with children. Moreover, as a rule, no "offending behaviour courses" are being organized for under 18 year-olds. This practice suggests that rehabilitation of children is at stake, which is contrary to international standards. The Commissioner recalls that Rule 26 of the Beijing Rules requires that 'the objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society'.

D. Sentencing of children

25. The Commissioner notes that the Ministers he spoke with as well as the staff of child custody centres admit that there is an overuse of child detention in the UK. Staff at YOI Huntercombe expressed their view that some of the children now there should not be in a YOI at all. The YJB Director acknowledged that young people tend to come into the juvenile justice system at a very young age. The Commissioner also notes the concerns of non-governmental organisations that too many children are being criminalized too young and that close to 3,000 children are in some form of custody in England and Wales at any one time; NGOs in Northern Ireland are also very concerned that children are not being detained "as a measure of last resort".²⁴
26. The UK Government informed the Commissioner that 'the main custodial sentence for under 18s since April 2000 has been the Detention Training Order (DTO) [which] is a two-part sentence, the first part spent in custody and the second part under supervision in the community.' During the mission, the Commissioner was informed by Mr. David Hanson, Minister of State (Ministry of Justice) of the introduction of a new Provision for a Youth Rehabilitation Order in the new Criminal Justice and Immigration Bill. This Bill received Royal Assent on 8 May. The provision for a new Youth Rehabilitation Order enables the courts to select from a wide range of community interventions when sentencing young people who have been found guilty of an offence.²⁵ The Commissioner expects this to strengthen alternatives to custody for children, bringing the UK closer to international standards in only using detention as the very last resort. The Commissioner is also aware

²⁴ The Commissioner was grateful to receive the Standing Committee for Youth Justice's publication Still waiting for youth justice (December 2006) and briefings prepared by the Children's Rights Alliance for England as well as the briefings prepared by the Children's Law Centre in Northern Ireland.

²⁵ Letter Ministry of Justice/Department for children, schools and families, April 23, 2008

that unless the interpretation and implementation of such reforms are managed with great care quite the opposite could prove to be the case, with rates of custody increasing as a consequence of ‘net-widening’ and ‘up-tariffing’.

27. The introduction of mandatory indeterminate detention for children (Criminal Justice Act 2003) is a retrograde step and takes the UK even further away from accepted children’s rights norms.²⁶ In particular, it frustrates the application of the proportionality principle in sentencing which requires the circumstances of the child to be taken into account.²⁷
28. The Commissioner is aware of Ministry of Justice figures that show the vast majority of the 5,291 children from England and Wales (15 to 17 years) detained in a YOI in 2006 were not convicted of grave offences: he notes that 20% of the child prison receptions related to violence against the person and only 1% to sexual offences. Many children appear to be imprisoned for petty offences;²⁸ this does not comply with article 37b of the Convention on the Rights of the Child which requires that ‘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’. The Commissioner was given information by the YJB that shows that of the 54 children in Oakhill STC at the end of February 2008, just 14 (26%) were detained as a result of violence against the person and two (4%) for sexual offences. A further 18 children (33%) were convicted of robbery, though the information provided does not indicate the circumstances of these offences.
29. Children accused of breaching an Anti-Social Behaviour Order (ASBO) are dealt with in *criminal* courts.²⁹ The legal definition of anti-social behaviour – that a person (from the age of 10) has acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself – is so wide and open for different interpretation that almost any childhood behaviour could be brought before the courts. Accepted standards of criminal justice and due process do not apply in ASBO proceedings, because they are *civil* procedures. For example, the burden of proof is “balance of probabilities”, and anonymous hearsay evidence is admissible. This has made children, including those with learning disabilities, especially vulnerable to human rights violations.³⁰ There does not appear to be any evidence that this approach to dealing with nuisance behaviour is effective and the practice often results in, or contributes to, custodial sentences. The Commissioner welcomes the recent recommendation of the Committee on the Rights of the Child that the UK establish an independent review on the use of ASBOs with a view to abolishing their application to children.³¹
30. The Commissioner notes changes in the law that permit the “naming and shaming” of children who have breached an ASBO (children subject to initial ASBO proceedings do not have their privacy protected because these are civil proceedings). He was informed of cases of very young children being vilified in the national press. He notes the criticism of the previous Commissioner that ‘the aggressive publication of ASBOs, through, for instance

²⁶ The Commissioner is aware that courts now have *discretionary* powers to pass a sentence of indeterminate detention, following changes made to the 2003 legislation by the Criminal Justice and Immigration Act 2008.

²⁷ Beijing Rules, Rule 17.

²⁸ Ministry of Justice. Statistical bulletin. Offender management caseload statistics 2006 (December 2007). Table 7.14 Receptions into prison establishments under sentence by age and offence.

²⁹ Children in England and Wales (12 to 17 years) can be detained for up to two years for breaching an ASBO. This is not compatible with the Convention on the Rights of the Child.

³⁰ The Commissioner was briefed on research which shows that children subject to ASBOs are among the most disadvantaged in the country. Department for Communities and Local Government (October 2006). Anti-social behaviour intensive family support projects: an evaluation of six pioneering projects.

³¹ Committee on the Rights of the Child, concluding observations on the UK’s third and fourth periodic report, 3 October 2008, CRC/C/GBR/CO/4

the door step distribution of leaflets containing photos and addresses of children subject to ASBOs risks transforming the pesky into pariahs. The impact on the family as a whole must also be considered. Such indiscriminate naming and shaming would, in my view, not only be counter-productive, but also a violation of Article 8 of the ECHR'.³² The Commissioner deeply regrets that the UK Government has not reinstated privacy safeguards for children. It is difficult to comprehend why any civilized government would permit such a practice, let alone pro-actively pursue it.

31. If the UK is to meet its international obligations in relation to the use of child custody, and the effective prevention of juvenile offending, it must considerably reduce the number of incarcerated children. The Commissioner considers the YJB target to achieve a 10% reduction of the number of children in custody from 2005 to 2008 to be too low, given the present very high numbers of children in custody. He notes that even this low target has not been achieved. As part of this strategy, consideration should also be given to the use of more 'open' settings thereby moving children out of locked environments.³³
32. The Commissioner agrees with the Ministers that prevention and early targeted (family-based) intervention should be at the core of the policy to reduce the number of children offending the law. He welcomes the reassurance given by Mr. Balls that cooperation between youth offending teams, families, schools and police is being improved. Some of these plans are set out in the '*Children's Plan. Building brighter futures*'.³⁴

E. Use of restraint and "distraction techniques" and child deaths in state custody

33. Several reports recently referred to problems in child custody institutions relating to physical restraints, forcible strip-searching and solitary confinement. Specific reports on the use of painful nose, rib and thumb "distraction techniques" in STCs came to the attention of the Commissioner.³⁵ The Commissioner is aware of the Freedom of Information disclosures obtained by the Children's Rights Alliance for England showing that in 2004/05 these "distractions" were used 768 times in secure training centres, resulting in 51 child injuries. More recent information shows the "distraction techniques" were used on 199 occasions in 2006, 14 times in the first five months of 2007 and 6 times between January and March 2008.³⁶ The Commissioner notes the considerable reduction in the use of "distraction techniques" on children but would still strongly argue for a clear legal prohibition. The Commissioner reminds Government of its obligations to protect children from all forms of violence and from torture or other cruel, inhuman or degrading treatment or punishment, under articles 19 and 37 of the Convention on the Rights of the Child and article 3 of the ECHR.
34. 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

³² Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom 4th – 12th November 2004 (June 2005).

³³ Beijing Rules, Rule 19.

³⁴ The Children's Plan states: 'We aim to significantly reduce by 2020 the number of young people receiving a conviction, reprimand or final warning for a recordable offence for the first time, with a goal to be set in the Youth Crime Action Plan'.

³⁵ Lord Carlile of Berriew QC's report 'An independent inquiry into 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'; Howard League for Penal Reform and Defence for Children International's study 'Violence against children in conflict with the law'; The Joint Committee on Human Rights (JCHR) report 'The use of restraint in Secure Training Centres'; The HM Chief Inspector of Prisons' 'Report on an announced inspection of the management, care and control of young people at Oakhill secure training centre'.

³⁶ House of Commons written answer, 9 July 2007: Column 1244W; House of Lords written answer, 6 May 2008: Column WA64

any other member state that sanctions the use of deliberate pain as a method of restraining a child. The Commissioner learnt that between April and December 2007, there were 63 minor child injuries and six major child injuries caused through restraint in young offender institutions in England and Wales. During this same nine-month period, there were 83 minor child injuries and two major child injuries caused through restraint in secure training centres in England.³⁷ Minor injuries include redness to skin, welts, scratches or bruising, grazes, nose-bleeds, concussion and sprains. Major injuries include serious cuts, fractures, loss of consciousness and damage to internal organs. The responsible Ministers suspended in December 2007 the use of the “Physical Control in Care” (PCC) “nose distraction technique” and the ‘double basket hold’ following concern expressed by the Medical Review Panel.

35. The method known as “Physical Control in Care” (PCC) is described in a prison service manual authorizing restraint techniques for use in STCs. However, this manual is not in the public domain. The Joint Committee on Human Rights recently recommended the full disclosure of the PCC manual, but Ministers have so far not agreed to release it due to a concern that “untrained people might attempt to use the techniques, possibly for inappropriate reasons”.³⁸
36. It should be noted that the Secure Training Centre Rules were amended in July 2007,³⁹ broadening the circumstances in which children in STCs can be forcibly restrained. The Court of Appeal has recently ruled that this amendment to the Rules was not justified in law and has quashed the amendment. The UK authorities have informed the Commissioner that it is considering an appeal as “the government is concerned that establishments must be able to ensure effective control in order to keep young people and staff safe”.⁴⁰ The Commissioner reiterates his concerns that there should be no unclarity regarding the circumstances in which methods of restraint may be used.
37. The Commissioner notes the Committee on the Rights of the Child’s general comment no. 8 (2006), which explains that *‘there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training 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.’* Rule 67 of the Havana Rules, which prohibits the use of disciplinary sanctions that compromise the physical or mental health of the child, is also noted.
38. Two experts were appointed by the UK Government in October 2007 to *independently review the use of restraint in juvenile justice settings*. Their report will examine policy and practice on the use of restraint in STCs, SCHs and YOIs. The Commissioner looks forward to the publication of the report which was presented by the experts to the Government on 20 June, 2008. The Government response is expected by the end of October 2008.
39. Since 1990 no less than 30 children have died in custody in the UK. Remarkably, there is no obligation in domestic law to hold a public inquiry into a child’s unexpected death in custody⁴¹, although this is implicit in the case-law of the European Court of Human Rights

³⁷ House of Commons written answer, 28 February 2008: Hansard Columns 1933W and 1934W.

³⁸ Letter Ministry of Justice/Department for Children, Schools and Families, April 23, 2008

³⁹ Statutory Instrument 2007 No 1709 - changes to the Secure Training Centre Rules 1998 which came into effect on 6 July 2007. The Secure Training Centre Rules are publicly accessible at <http://www.opsi.gov.uk/si/si1998/19980472.htm>

⁴⁰ Response of UK authorities to Commissioner’s Memo.

⁴¹ See also Rule 57 of the Havana Rules which requires an independent inquiry into suspicious death of children in custody.

on article 2 of the ECHR⁴². The Commissioner is distressed to learn of the restraint-related deaths of two children in STCs in 2004. Fifteen year-old Gareth Myatt died as a result of restraint⁴³ and 14 year-old Adam Rickwood hanged himself hours after being restrained and subject to the “nose distraction”.⁴⁴ The Commissioner supports the comments made by High Court judge Mr. Justice Bennett when the latter considered the issue of an inquiry into the death of Joseph Scholes, a 16 year-old boy who hanged himself on 24 March 2002 from the bars of his cell in Stoke Heath YOI: ‘... *it is absolutely plain that there is great concern. As to whether young persons under the age of 18 years should be locked up at all, whether they should be in secure units outside the prison service (or) in YOIs, what form of incarceration is necessary for protection of the public from young offenders, and what financial resources should be devoted to young offenders. Deaths in custody of young offenders must be an unimaginable and terrible trauma for the deceased, and must leave their families completely distraught. This rightly should attract a high degree of public scrutiny... these are matters for public and political debate.*’⁴⁵ In this regard, the Commissioner welcomes the recent recommendation of the Committee on the Rights of the Child that there should be an automatic, independent public review of all unexpected child deaths in custody.⁴⁶

F. Resettlement and re-offending

40. The UK Government has communicated to the Commissioner that it considers ‘*resettlement of young offenders as an important part of the custodial sentence ... Resettlement issues are addressed as part of sentence-planning in custody: for example, there are awareness programmes aimed at reducing re-offending and equipping the young person with the skills needed to become a successful member of society.*’⁴⁷ The Children Act 1989 requires that local authorities provide accommodation and support for children in need of care or protection. Local authorities have clear and ongoing legal duties toward children in care who are serving custodial sentences, and to those who are preparing to leave custody. In addition, the Children Act 2004 places a duty on a very broad range of bodies and key individuals, including youth offending teams and governors and directors of prisons and secure training centres respectively, to have regard for the need to safeguard and promote the welfare of children.
41. However, it is acknowledged by Government and the YJB that there is a discrepancy between what the law prescribes and the availability and quality of services currently delivered. There seems to be a problem of unequal standards and infrastructures across local authorities. In this regard the Commissioner notes the successful legal challenges brought by the Howard League for Penal Reform, which confirm the application of the Children Act 1989 to children in penal detention. Mr. Hanson and Mr. Balls explicitly stated that local authorities should improve their services and for that reason “performance indicators” are now being prepared as well as the introduction of a “statutory duty” for local

⁴² See *mutatis mutandis* EctHR judgments *Tais vs France*, 1st June 2006 or *H.Y. and Hu Y v Turkey*, 6 October 2005.

⁴³ His Honour Richard Pollard, Assistant Deputy Coroner for the County of Northampton, in letter to Jack Straw on 18/07/07 described the cause of Gareth Myatt's death as ‘asphyxia resulting from a combination of inhalation of gastric content and his body position during physical restraint’

⁴⁴ INQUEST monitoring www.inquest.org.uk. It should also be noted that 55 young people aged 18 to 21 years died from non-natural causes in custody between 1997 and 2006 (House of Commons written answer, 19 July 2007: Column 588W).

⁴⁵ http://inquest.gn.apc.org/pdf/why_are_children_dying_in_custody.pdf

⁴⁶ Committee on the Rights of the Child, concluding observations on the UK's third and fourth periodic report, 3 October 2008, CRC/C/GBR/CO/4

⁴⁷ Letter Ministry of Justice/Department for children, schools and families, April 23, 2008

authorities to improve resettlement services.⁴⁸ Welfare and care should be the two main priorities for children who leave a STC or YOI in line with international standards.⁴⁹

42. The UK Government provided the Commissioner's office with statistics which showed that in the period between April 2007 and February 2008, the successful overall resettlement rate for children leaving a YOI was 69% and for Huntercombe 37%. It should be noted, however, that no clear definition of 'successful resettlement' is given.
43. The current success of resettlement arrangements depends a lot on geographical factors. For example, since home for many of the boys in YOI Huntercombe is in London (and Huntercombe is about 65 kilometres from London), resettlement has to be arranged with London local authorities which can be problematic. Nationally, a significant minority of children (up to 10%) in custody are held more than 160 kilometres away from home. This inevitably reduces opportunities for rehabilitation. The Commissioner was concerned to hear that a number of children receive very few family visits.
44. Reoffending rates are high: according to official figures of the Ministry of Justice, 40.8% of the children leaving custody re-offend within a year.⁵⁰ Another communication of the Ministry of Justice states that the 'one year follow up re-offending rate amongst those released from YOIs is 76.2%'.⁵¹ This should cause serious questions to be asked about the efficacy and purpose of the entire juvenile justice system in England and Wales and the use of detention in particular.

G. Conclusions and recommendations

45. The Commissioner commends the efforts of the UK Government to take a holistic approach to the problems identified in the juvenile justice system. He hopes the announced plans will be translated into concrete improvements in the care and assistance received by children. The Commissioner welcomes the emphasis on prevention in the youth crime action plan, published in July 2008, though he believes that more and explicit consideration to the human rights obligations of those working with children in conflict with the law should be given.
46. He also commends the dedicated staff of juvenile justice institutions whom he met. He realises the challenges that staff face in working with vulnerable groups of children in institutional environments.
47. The Commissioner welcomes the introduction of independent advocates⁵² into child custody. However, he seeks reassurance that children are able to access them freely and in confidence and that children feel able to raise concerns and complaints without fear of retribution. He recommends that annual reports describing the issues raised by children in contact with advocacy services, and the actions taken by institutions, the YJB and social

⁴⁸ The Commissioner was also informed about a series of piloting Resettlement and Aftercare Provision schemes in a number of YOIs. The programme is currently being evaluated.

⁴⁹ Havana Rules, Rules 79, 90

⁵⁰ Letter Ministry of Justice/Department for children, schools and families, April 23, 2008. It should be noted that according to the information in this letter, the latest year for which re-offending data are available is 2005. Figures for 2006 and 2007 were not provided.

⁵¹ Information provided by Youth Justice Board for England and Wales (15/04/2008). Ministry of Justice (July 2007) Re-offending of juveniles: results from the 2005 cohort. Please note that this figure applies to children in England and Wales only.

⁵² The role of the professional independent advocate is to work exclusively with the child intending to ensure that the child's views are heard and their rights promoted. Professional independent advocacy provides a child or young person with some sense of control over their own life and enables them to contribute to important decisions.

workers (who have recently been introduced into YOIs), be made publicly available. In addition, children in detention must have the right to access statutory, independent and effective complaints mechanisms with respect to their treatment. This is essential to protect against abuse and to ensure children's rights are protected in detention.

48. The current challenges in the juvenile justice system demand decisive action and the protection of vulnerable children in custody must be the utmost priority. The Commissioner recommends that custodial sentencing of children be reformed with a view to radically reducing the numbers of children in custody and ensuring that the current control/punitive model be replaced with a child-centred approach. The Commissioner welcomes the Youth Rehabilitation Order under the new Criminal Justice and Immigration Act. However, he considers that a legal safeguard must be introduced to ensure that custody is only ever used as a last resort for children. This would give statutory expression as to the circumstances in which it is appropriate to order the detention of children (i.e. as to what 'last resort' means). The Commissioner welcomes the recent recommendation of the Committee on the Rights of the Child⁵³ that the UK introduce a 'statutory principle' to ensure that custody is used only as a very last resort – a view that the UK government also shares, as reflected in the response to the Memorandum of the Commissioner.⁵⁴
49. It is a matter of serious concern that there is no legal obligation to undertake an independent *public* inquiry into the death of a child in custody, contrary to Article 2 of the ECHR and other international standards. The Commissioner notes the UK Government's response to the 34 recommendations of the Coroners of the inquests into the deaths of Gareth Myatt and Adam Rickwood. He attaches particular importance to the Government's commitment to review the use of all restraint methods. The Commissioner looks forward to a swift implementation of these recommendations. When children have been restrained their own perceptions of events should be recorded and they should have independent support to be able to make complaints when necessary. This is essential to comply with article 12 of the Convention on the Rights of the Child, which requires children's views to be heard and taken seriously.
50. The Commissioner recommends that the UK Government considerably increase the age of criminal responsibility to bring it in line with the rest of Europe.
51. Children should never be imprisoned as a result of breaching an ASBO. Children's privacy should be protected and the policy of "naming and shaming" children prohibited. The Commissioner is alarmed that punishment has been introduced as one of the purposes of sentencing of children. This is not compatible with international human rights standards, which do not recognise retribution as a legitimate objective of juvenile justice systems.
52. The Commissioner recommends that there should be an overall examination of children in custody, not only regarding reducing numbers, examining respect for the rights of children in detention (including protection, education, health, rehabilitation and complaints and advocacy mechanisms) but also looking at the appropriateness of places of detention. In particular the Commissioner recommends that Prison Service procedures and staff training should be reviewed to ensure those working with children are appropriately qualified. Consideration should also be given to the staff mix in detention centres to ensure an appropriate balance of therapeutic, education and care staff.
53. The Commissioner urges the immediate discontinuation of all methods of restraint that aim to deliberately inflict pain on children. He notes the recommendation of the United Nations Secretary-General's Study on Violence Against Children: *'The State must not itself be a*

⁵³ Committee on the Rights of the Child, concluding observations on the UK's third and fourth periodic report, 3 October 2008, CRC/C/GBR/CO/4.

⁵⁴ Response of UK authorities to Commissioner's Memorandum (received 10 September 2008)

perpetrator of violence against individuals in its care ... The use of corporal punishment and other cruel or degrading forms of punishment or control must be prohibited explicitly within all institutional and alternative care settings where children reside or are detained.' The UK Government must as a matter of urgency ensure that corporal punishment is explicitly prohibited in all custodial settings.

54. The Commissioner shares the concerns of the Committee on the Rights of the Child that detained children are excluded from their statutory right to education contrary to the Convention on the Rights of the Child and the ECHR. He also notes the concerns expressed by Her Majesty's Chief Inspector of Prisons in relation to the mental health needs of children not being met and in this regard he is concerned that local authorities do not retain financial or legal responsibility for the welfare of individual children sentenced to detention. The Commissioner recommends that local authorities be given full responsibility for ensuring the provision of services to children in detention and that local authorities cover the costs and assume all of their legal responsibilities for children held there. In this way children in conflict with the law are kept within the child welfare system.

Appendix

Response to Commissioner for Human Rights of the Council of Europe Thomas Hammarberg.

Following his visit to the United Kingdom on February 5 – 8 and 31 March to 2 April 2008.

Issue reviewed: Rights of the child with focus on Juvenile Justice

We welcome and have noted the Commissioner's comments on the Youth Justice system in England and Wales. Children in custody can be some of the most troubled and difficult children in the country. Finding a balance between protecting the public, ensuring justice for the victims of crime and ensuring that young people's rights are fully met is often a difficult task. We have made great strides in this area, with improvements to safeguarding, healthcare and educational provisions in under-18 secure settings, and with the expansion of out-of-court diversions and community sentences as alternatives to custody.

Part II Children in Custody

We welcome the careful thought that has gone into the Commissioner's comments and recommendations and we take the opportunity to comment on the following paragraphs:

B. The age of criminal responsibility and the child custody system in the UK

10. The Government agrees that more accommodation is needed for vulnerable boys. (All accommodation in the girls' estate is well adapted to dealing with vulnerability.) But, it does not follow that because a young man (aged 15 or over) is identified as "vulnerable" by the Youth Offending Team, he should necessarily be accommodated in a secure training centre or secure children's home. The term "vulnerability" covers a wide range of factors, including physical or emotional lack of maturity, family difficulties, bereavement, health problems and educational difficulties. The Youth Justice Board would expect a 17-year-old with dyslexia to be noted as vulnerable, but would not necessarily decide that he should be placed in a secure training centre or secure children's home. There might well be good reasons why a young offender institution would be more appropriate. The Youth Justice Board is addressing the need for extra accommodation suitable for more vulnerable older boys by developing specialist units within the young offender institution estate. The first of these, a 48-place unit at Wetherby, is due to open in October 2008.
12. The Youth Crime Action Plan was published on 15 July, details of which can be found on the following website: <http://www.homeoffice.gov.uk/documents/youth-crime-action-plan/>.

C. Conditions in child custody and visits to two institutions

16. Secure training centres have high staff - trainee ratios (although most of the staff are not social workers). Young people who are in the care of a local authority before entering custody, remain within its care during the custodial period and local authorities have

continuing responsibility for their well-being and to provide social worker support as necessary.

18. The Chief Inspector's comments point to the importance of effective control if young people (and staff) are to be kept safe and a child-focused ethos fostered.

Oakhill Secure Training Centre

19. In May 2008, following a takeover involving Group 4 Securicor, a new Director, who was previously Director of the very successful Rainsbrook secure training centre, has been appointed. The Youth Justice Board is looking to the operators to make urgent improvements.

Footnote 18: Occupancy varied between 41 per cent (January 2008) and 69 per cent (September 2007 and February 2008).

Young Offender Institution Huntercombe

22. Nationally fewer than 14 per cent of young people under 18 who were sentenced to custody in 2006 had committed offences in the general category "theft and handling stolen goods".

D. Sentencing of children

28. In legal terms, theft is 'the dishonest appropriation of property belonging to another with the intention of permanently depriving that person of it', while robbery occurs where 'a person steals and immediately before or at the time and in order to do so, uses force on any person or puts or seeks to put, any person in fear of being, then and there, subjected to force'. Further information can be found at: http://www.cps.gov.uk/legal/section15/chapter_p_16_19.html.
29. The categories used in the quoted statistics describe types of offence, not degrees of seriousness. Most of those in the broad "theft and handling stolen goods" category, for example, were convicted of aggravated vehicle taking – "joy-riding" - which puts members of the public at serious risk and not infrequently results in fatalities. It is true that "robbery" may be (relatively) trivial; it may also be extremely serious. It is not possible to judge the seriousness of a particular robbery by reference to the object stolen. Robberies involving young people may, as the Commissioner suggests, involve the theft of a mobile telephone, but the seriousness depends chiefly on the degree of violence used or threatened. Robbery of a trivial sum or object, in the course of which the victim receives serious physical or psychological injury, is a serious offence.

E. Use of restraint and "distraction techniques" and child deaths in state custody

34. The Medical Review Panel expressed concern about use of the nose distraction technique but did not recommend its withdrawal. Ministers decided, however, that this would be the best course.

35. The government does not believe it is necessary for the public to be aware of the content of the manual as it is available to the health care panel, including the Physical Control in Care Medical Panel which approves the safety of the restraint holds.
37. The Court of Appeal has now ruled that the amendment to the Rules was not justified in law and has quashed the amendment. The Government, which is concerned that establishments must be able to ensure effective control in order to keep young people and staff safe, is considering an appeal.
38. It is made very clear both in law and in guidance (the Youth Justice Board's code of practice "Managing Children and Young People's Behaviour in the Secure Estate") that restraint is not to be used as a punishment.
39. The report was delivered to Ministers on 20 June. The Government announced on 24 June that it intended to publish the report, and its response, by the end of October 2008.
40. The obligation under Article 2 of the ECHR is discharged by the holding of an inquest – as Mr Justice Bennett (quoted later in the paragraph) found and the Court of Appeal subsequently confirmed.

G. Conclusions and Recommendations

46. The Government welcomes the Commissioner's acknowledgement of the efforts of the UK Government to take a holistic approach in the juvenile justice system. The Government attaches high priority to this.
47. The Government welcomes the Commissioner's comments about the dedicated staff of juvenile justice institutions whom he met.
48. The Government welcomes the Commissioner's acknowledgement of the introduction of independent advocates and notes his recommendations. The Government strives to protect against abuse and to ensure children's rights are protected in detention.
50. The Government has made it clear that force may not be used as a punishment; please see responses 38 & 40 above.
52. The Government welcomes the Commissioner's acknowledgement of the Government's intention to strengthen alternatives to custody.
53. The Government takes note of this recommendation and would like to elaborate further the approach it takes to this issue:

In the case of children and young people breaching ASBOs, age alone is insufficient to justify reporting restrictions being imposed; the court must have good reason to make an order.

Section 141 of the Serious Organised Crime and Police Act 2005 reverses the presumption in relation to reporting restrictions in the court for breach of ASBOs. This means that in the event of such proceedings being made against a child or young person for breach of an order, a court will not be bound by automatic reporting restrictions in

section 49 of the Children and Young Person's Act 1933. While automatic reporting restrictions do not apply, the court retains the discretion to impose them.

Such situations would arise where a court determines that a young person would be at risk of harm if his or her details were made public. At the other end of the scale, young people themselves may be victims of anti-social behaviour and need protection from the perpetrator even if he or she is also a child or young person, in which case it would be appropriate for the court to allow open reporting to enable the ASBO to be enforced. These situations may sometimes provide a conflict of interests which are ultimately matters for courts to decide. Case law has determined that, in order to operate effectively, ASBOs need to be publicised and that the use of appropriate and proportionate publicity is compliant with both the ECHR and the Human Rights Act 1998. Ultimately this is a matter for the courts. The test case of *R (Stanley, Marshall & Kelly) v the Metropolitan Police Commissioner, London Borough of Brent and Secretary of State for the Home Department* [2004] EWHC 2229 (Admin) confirmed that ASBOs needed publicity in order to operate and that appropriate and proportionate publicity was compliant with both the ECHR and the Human Rights Act 1998. The judgement recognised the rights of the community in publicising ASBOs and agreed with the principle that publicity is necessary in order to enforce ASBOs. More details can be found at: <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmhaff/80/80.pdf>.

We are clear that custody should be a last resort for young people who breach their ASBOs. This is recorded in joint Youth Justice Board/Home Office/Association of Chief Police Officers guidance. A study by the Youth Justice Board in December 2004 concluded that the use of ASBOs was not bringing a whole new group of young people into custody. The study identified the majority of young people entering custody as a result of breaching an ASBO as prolific offenders. In the study, 43 young people who received custody for breach of an ASBO had a total of 1779 offences between them. Further research by the Youth Justice Board published in November 2006 confirms this finding.

This is also backed up by the National Audit Report published in December 2006 which found there are a hard core of individuals heavily involved in anti-social behaviour and crime who are prolific offenders, and who have significant criminal records – an average of 31 convictions.