



A report on the use of segregation in youth custody in England

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Summary

The number of episodes of segregation in youth custody in England and Wales has increased in the past 4 years, even as the overall number of children detained has fallen. The average length of periods of detention has doubled, from 8 to 16 days, with seven out of ten episodes of segregation in Young Offender Institutions lasting over a week. The number of episodes of segregation in STCs has also risen and is now (on a pro rata basis) approximately 33 times higher, though it is likely this is influenced by changes in how data is recorded.

Background

The Children's Commissioner for England has a statutory duty to promote and protect the rights of all children in England. This duty extends to children within the criminal justice system. The Commissioner also chairs the Children's Sub-Group of the National Preventative Mechanism, so has a role in independently monitoring custodial conditions for Children in England and Wales to strengthen the protection of children deprived of their liberty.¹

The Commissioner undertakes a rolling programme of visits to Young Offender Institutions (YOIs) and Secure Training Centres (STCs) where she speaks to children and staff to keep abreast of issues children are experiencing. Over the past 12 months an issue of concern raised during these visits has been the use of segregation, with reports of some children spending up to 23.5 hours in a cell each day, for days and sometimes weeks on end. This practice would appear to contravene Articles 37 and 40 of the United Nation's Convention on the Rights of the Child². In response to this information, the Office of the Children's Commissioner (OCC) undertook to collect data from all YOIs and STCs about their use of segregation.

The segregation of young offenders in secure settings receives significantly less attention than other issues within the youth justice estate. Restraint, for example, has been the subject of intense media scrutiny, independent reviews, and a thematic report from HMIP.³

Information about the length and circumstances of segregation in the secure estate is not centrally collected or published. The annual number of 'single separations' in STCs and Secure Children's Homes is published, but without any additional information. No information about instances of segregation in YOIs is published. We asked the Youth Custody Service why this is, and they responded:

'...data is recorded and reported differently across the three secure sectors. There are several reasons for this, for example, each sector is commissioned differently and operates an environment most suitable for the children and young people placed there. There are different rules and legislation governing each sector and therefore what is collected centrally and suitable for publication varies'.⁴

¹ <https://www.nationalpreventivemechanism.org.uk/monitoring/>

² <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³ <https://www.gov.uk/government/publications/minimising-and-managing-physical-restraint>;
<https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/11/Behaviour-management-and-restraint-Web-2015.pdf>

⁴ Letter from the Youth Custody Service on separation, 4th October 2018.

The data collected for this report builds on research commissioned by the OCC in 2015 (Appendix 1) which measured the prevalence, causes, nature and impact of isolation on children. Comparing the data from both periods enables us to assess whether there has been a significant change in segregation across YOIs and STCs. The analysis of segregation within Secure Children's Homes (SCHs), also conducted in 2015, is not within the scope of this paper.

What does segregation mean in practice?

Statutory basis/governance

The experience of segregation varies greatly across different types of settings. This is, in part, influenced by the different legislation which governs the use of segregation in YOIs and STCs.

Rule 36 of the Secure Training Centre Rules states that a child may be removed from free association to stop them from:

- > causing harm to themselves;
- > causing harm to another person; or
- > significantly damaging property.

The Secure Training Centre rules also stipulate that children should only be processed under rule 36 when all other appropriate methods of control have been unsuccessfully applied. Rule 36 also dictates that children are observed at least once in every period of 15 minutes, and not left unaccompanied (during normal waking hours) for more than 3 hours.

The legislation which governs YOIs, however, is far less explicit in its directions about the use of removal from association. Rule 49 of the Young Offender Institution Rules states that children should be removed from association when:

- > it is necessary for the maintenance of good order or discipline; or
- > it is in their own interests not to associate with other children, either generally or for particular purposes.

The rules set out that the governor must give written authorisation to remove a child from association for a period of longer than 72 hours. After 72 hours, the governor can give written authorisation for the continued removal of the child to a maximum of 21 days, at which point approval must be sought from the Secretary of State (SoS). In practice, this sign off often comes from a Deputy Director of Custody (DDC) in place of the SoS. The DDC is a HM Prison and Probation Service (HMPPS) official who oversees a number of prisons in an area. If a child is to be removed for a period of 3 months or longer, then the sign off must come from the Director of Public Sector Prisons at HMPPS.

Conditions

The conditions under which children are separated vary greatly across different settings. In STCs, children are segregated in their rooms, or other spaces such as empty classrooms, for a relatively short period of time. In YOIs however, most recorded periods of segregation refer to when the child has been formally removed to the segregation unit. These units are similar to those found in adult prisons – some are actually shared with the adult estate*. Children are often left in the segregation unit without any meaningful contact with their peers, in cells with very few – sometimes none – of their possessions or other stimuli such as books and radios. In theory, removal from free association should not prohibit access to legal advice, advocacy, exercise and education. In practice, however, these appointments are often not facilitated. In some cases, children are in their cells all day and are only allowed out to shower or to exercise for 30-60 minutes. Sometimes they also have access to ‘education packs’ while in their cells.

Practice varies significantly across establishments. Some YOIs carry out personalised risk assessments to decide what level of participation each teenager can engage in and regularly adjust this with a focus on reintegration. Others, however, adopt a more risk-averse approach, with too many children on the most basic regime limited to time out of cell for just one telephone call, a shower and 30 minutes’ exercise and limited education.^{5 6}

In May Dr Phillip Lee, then Parliamentary Under-Secretary of State at the Ministry of Justice, with responsibility for youth justice, said that he had ‘...been assured that young people are never subject to solitary confinement in this country.’⁷ Our research, however, suggests that the conditions some children are exposed to do fit the definition of solitary confinement. The Chief Inspector of Prisons confirms that in many YOIs boys are locked up for more than 22 hours a day.⁸

Children’s views

There is little research into the impact of segregation which relates specifically to children, however evidence in an adult context suggests that ‘solitary confinement’ can have a significant impact on a person’s physical and mental health. In 2007 a group of 24 international experts came together to issue the Istanbul Statement on the use and effect of solitary confinement. This statement was later adopted by the UN. It states that solitary confinement can cause symptoms ‘...ranging from insomnia and confusion to hallucinations and psychosis...’ it goes on to explain that ‘negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions’.⁹

* We have now had reassurance from the YCS that this practice will cease from 10 December children, save in a severe operational emergency.

⁵ Report on an unannounced inspection of HMYOI Werrington by HM Chief Inspector of Prisons 15–25 January 2018.

⁶ Report on an unannounced inspection of HMYOI Wetherby and Keppel by HM Chief Inspector of Prisons 5–15 March 2018.

⁷ HC Deb 01 May 2018, vol 640, col 99WH

⁸ https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/07/HMIP-AR_2016-17_CONTENT_11-07-17-WEB.pdf

⁹ http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf

There is growing consensus that segregation is inherently unsuitable for children. In April 2018, the British Medical Association (BMA), the Royal College of Psychiatrists (RCPsych) and Royal College of Paediatrics and Child Health (RCPCH) released a joint statement condemning the ‘solitary confinement’ of children, warning that for children the risk of long-term psychiatric and developmental harm is increased.¹⁰ UN CRC has also held that using solitary confinement as a disciplinary measure for children is a violation of article 37 CRC and must be strictly prohibited.¹¹

The Special Rapporteur of the United Nations Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, defines solitary confinement as ‘the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day’.¹²

Children, particularly those with mental health difficulties, have described the turmoil caused by this sort of isolation¹³:

‘It was a lot of emotions going through my head at once really, I was upset, angry. I’ve gone from being out of my pad all day to being isolated, well locked up really for three days straight so there was a lot of emotions going through my head. I didn’t really know what was going on. I was up and down I was angry smashing up my pad and stuff like that. I ended up tying something round my neck and dropped to the ground’ [Child in YOI]

‘When I’m in my room if I’m separated I’ll keep banging and I’ll want to come out. I can’t sit down and chill, and like I’ll start banging, calling after them. I’ll want to meet the mediation people. It’s very upsetting’. [Child in STC]

How common is segregation today?

The OCC requested data from all STCs and YOIs in England and Wales, about the number of and average length of instances of segregation in the period 1st January to 30th June 2018 inclusive

Establishments were also asked about the longest period of segregation that occurred in this 6 month period. The data refers to instances where children were formally managed under the rule 49 process on the Care and Separation Unit for YOIs and under rule 36 in STCs, but also when children were managed under these rules on normal location (for YOIs).

The below tables map out the number of instances of separation over the 6 month period in YOIs and STCs. The average length of separations is much longer for YOIs, which is in part due to the different legislation which governs the use of separation in each type of establishment as outlined above.

¹⁰ <https://www.bma.org.uk/collective-voice/policy-and-research/equality/the-medical-role-in-solitary-confinement/our-joint-position-statement-on-the-medical-role-in-solitary-confinement>

¹¹ UN CRC, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25/04/2007, para.89.

¹² Cited in the Istanbul Statement on the use and effects of solitary confinement, adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul
[\[http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf\]](http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf)

¹³ Children’s Commissioner for England (2015) Unlocking potential: a study of the isolation of children in custody in England. London: Children’s Commissioner

Young Offenders Institutes

| Institution | Number of children segregated | Number of episodes of segregation | Average length of segregation | Number of episodes lasting more than 1 week | Longest segregation |
|------------------------------|-------------------------------|-----------------------------------|-------------------------------|---|---------------------|
| Cookham Wood | 66 | 70 | 9 days | 44 | 89 days |
| Feltham | 81 | 127 | 18 days | 94 | 100 days |
| Parc | 5 | 5 | 8.6 days | 3 | 12 days |
| Werrington | 60 | 98 | 15.1 days | 55 | 75 days |
| Wetherby | 102 | 137 | 19.1 days | 110 | 79 days |
| Across the YOI estate | 314 | 437 | 16.15 days | 306 | 100 days |

In four out of the five YOIs, the number of children segregated is lower than the number of episodes of segregation in the period. This is because within these establishments there are some children who have been segregated more than once in the 6 month period.

The use of segregation varies widely, with Parc YOI¹⁴ (located in Wales) reporting only 5 episodes in the period, compared with 137 at Wetherby YOI. Parc YOI is recognised by HMIP as having ‘commendably low’ levels of segregation, which is attributed to the effective use of other forms of behaviour management.¹⁵

The average length of an episode of segregation across all YOIs is 16.15 days. This number is worryingly high, particularly as we know that access to books, media, working facilities and activities is not guaranteed.

Across all YOIs there were 306 separate episodes of segregation which lasted over 1 week. When compared with the overall number of episodes of segregation, this figure is very high – it indicates that 70% of episodes of segregation lasted more than a week.

Another area of serious concern is the longest reported episodes of segregation. The longest period of segregation was 100 days, with all YOIs in England reporting at least one instance of segregation of 75 days or more. These figures are unacceptably long. The Youth Custody Service has explained that within these figures there are some children who choose to self-isolate. We have also been told by YOI staff that some children do not want to engage in the normal regime or interact with their peers for various reasons: some do not feel safe, and others are acutely mentally unwell. The Commissioner is concerned that if a child chooses to self-isolate for long periods then the reasons for this should be investigated and appropriate support needs to be put in place. We hear from YOI staff of boys kept in isolation because they are too mentally unwell to associate with peers, yet are unable to access mental health beds.

¹⁴ Note: Parc does not have a designated segregation unit.

¹⁵ Report on an unannounced inspection of Young Persons’ Unit at HMP & YOI Parc by HM Chief Inspector of Prisons 16–26 October 2017.

Secure Training Centres

| Institution | Number of children segregated | Number of episodes of segregation | Average length of segregation | Number of episodes lasting more than 1 week | Longest segregation |
|------------------------------|-------------------------------|-----------------------------------|-------------------------------|---|---------------------|
| Medway | 118 | 186 | 63.42 minutes | 0 | 195 minutes |
| Oakhill | 57 | 92 | 65 minutes | 0 | 200 minutes |
| Rainsbrook | 220 | 230 | 62 minutes | 0 | 280 minutes |
| Across the STC estate | 395 | 508 | 63.1 minutes | 0 | 280 minutes |

The figures in the above table relate to children managed under the rule 36 protocol. Oakhill, however, also reported two other periods of separation during the period which lasted 23 and 18 days respectively. Oakhill clarified that these were not considered as true episodes of segregation under rule 36, as the children were engaging with staff, taking part in education and there were plans in place for reintegration.

The longest period of segregation (in an STC), was reported by Rainsbrook as 280 minutes, or 4.7 hours. We have been assured that staff are aware of the statutory safeguards under rule 36 and as such do not leave children unaccompanied for longer than 3 hours.

STCs reported that there were 508 separate instances of segregation, involving 395 children, some of whom have been segregated multiple times. The average population across all STCs in the period, however, was 168. This is explained by the high turnover of children within these establishments.

Are things getting worse?

The OCC's 2015 research collected data across a 7 month period, from 1 June 2014 -31 Dec 2014. There were 18 episodes of segregation recorded in all STCs in this period. Our 2018 data, however, showed that over a 6 month period there were 508 episodes of segregation. This suggests that on a pro rata basis, the number of segregations is approximately 33 times greater than it was in 2014. It is likely, however, that this dramatic increase is (in part) caused by changes in how data is recorded. The average duration of instances of segregation was not recorded for STCs, however the data showed that the average length of segregation in YOIs was 8 days. Our 2018 data shows that the average length of segregation across YOIs was 16.15 days. The average length has therefore more than doubled in a period of less than 4 years. The number of episodes has also increased: there were 357 episodes recorded in YOIs over 7 months in 2014, but 437 episodes over 6 months in 2018. Therefore the number of segregation episodes per month has increased by 43%: from 51 in 2014 to 73 in 2018. This is despite the fact that the total YOI population has fallen since 2014.

Conclusion

The average length of episodes of segregation has doubled from 8 to 16 days between 2014 and 2018, with 70% of episodes of segregation now lasting more than 1 week. In every YOI in England, the longest recorded episode during the first half of 2018 was 75 days or longer. The potential long-term damage this could cause to an already vulnerable group of children is of deep concern to the Children's Commissioner. Additionally we are very concerned that the structures in place around external governance mean that a child can be separated for 21 days before there is any external oversight. The Commissioner is therefore calling for strengthened transparency and accountability around the use of segregation across the youth justice system.

Anecdotally, we have heard about three things that may be driving the increased use of segregation:

- > Gang involvement, which means that teenagers may be unable to associate safely with other children in the establishment.¹⁶
- > Staffing levels – poor child to staff ratios make it harder for children, and in particular higher risk children, to move around the prison.
- > Shortages of NHS mental health beds - sometimes children spend long stints in segregation while waiting for a mental health bed to become available. A report published by NHS England on 5 October 2018, 'Census of young people in secure settings on 14 September 2016: characteristics, needs and pathways of care', found that 41% of young people placed within the youth justice estate had mental health or neurodevelopmental difficulties.¹⁷

It is clear that the lack of transparency in the recording of segregation needs to be corrected. Figures for the number and average length of periods of segregations are not published at all for YOIs, and for STCs and SCHs only the number of separations is recorded in the Youth Justice Statistics. Figures for all segregations of young people should be collected centrally and included in the Youth Justice Statistics. We asked the Youth Custody Service (YCS) about the data on segregation and the issues around reporting. They have assured us that the YCS will shortly review the data they hold and take steps to improve what is recorded, reported and published. We welcome this move and will continue to campaign for improved transparency and accountability across the whole system.

¹⁶ Note: This is also impacted by the closure of 3 YOIs, an STC and an SCH over the past 4 years. There are fewer placements, which makes it more difficult to keep rival gang members separate.

¹⁷ <https://www.england.nhs.uk/publication/secure-settings-for-young-people-a-national-scoping-exercise/>



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