

## Briefing: Children in custody during lockdown

February 2021

Since the start of the Covid pandemic, the Children's Commissioner's Office has investigated and highlighted concerns about the treatment of children in secure settings. Our [briefing](#) in May used data collected from the Youth Custody Service (YCS) alongside a series of interviews with children to shine a light on conditions for children in custody during the pandemic. The briefing highlighted a number of concerns about the impact increased restrictions were having on children, including a significant impact on mental health and wellbeing.

In July, the then Chief Inspector of Prisons, Peter Clarke, wrote that:

*"...in prisons, there is now a real risk of psychological decline among prisoners, which needs to be addressed urgently, so that prisoners, children and detainees do not suffer long-term damage to their mental health and well-being, and prisons can fulfil their rehabilitative goals".<sup>1</sup>*

There have been some positive developments since the first lockdown. The YCS publicly committed to the importance of maintaining education for children and acknowledged the need for family contact, prioritising face to face visits for children from August. The importance of face-to-face contact with independent advocates has also been acknowledged and advocates are now on site, which was not the case during the first lockdown.

But there continue to be concerning findings from inspectorates – Ofsted's inspection found the situation in Rainsbrook Secure Training Centre (STC) was so dire that the Urgent Notification process was triggered in December. Perhaps most shocking in Ofsted's report was the revelation that newly arrived children spent two whole weeks locked in their cells, except for 30 minutes per day. A policy devised to reduce the risk of bringing infection into Rainsbrook STC has in practice led to children being, for all intents and purposes, in solitary confinement for two weeks, which casts serious doubt on central oversight arrangements, and how effectively they are monitoring the lived experiences of children in custody.

Nine months and two lockdowns on from our first briefing, this update shows that in many cases the offer to children – particularly in Young Offender Institutions (YOIs) - remains inconsistent. While staff in many individual establishments are working as flexibly as possible to do their best for children, the existing resources only go so far. Many children are still spending long periods locked alone in their cells, which is likely to have a profound effect on their psychological wellbeing in the long term. This could serve to undermine their rehabilitation and impede their resettlement back into the community when they are released.

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<sup>1</sup> <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/08/SSV-aggregate-report-web-2020.pdf>

## Time out of cell

### Young Offender Institutions

The Youth Custody Service (YCS) has provided us with detailed information on the amount of time children in YOIs spend out of their cells. Comparable data is not available for STCs or SCHs. This time can be spent on any number of activities, including any 'unlocked' time to undertake chores or structured activity, education hours, interventions, time in the fresh air for exercise, meals, showers (if there are no shower facilities in their cells), and one to one support provided by staff to children.

The YCS introduced a new method for YOIs to calculate time out of cell in August 2020. The new methodology aims to ensure that YOIs are providing comparable data, calculated in a standardised way. Reliable data prior to August 2020 is not available so this has been excluded from this report. Data from August 2020 should be interpreted as an estimate of time out of cell, as the new methodology is being embedded within YOIs and figures may be subject to further revision. Due to the lack of data prior to August, establishing a pre-COVID-19 baseline of time out of cell for comparison has been challenging. The legal requirement for YOIs prior to COVID-19 was to provide at least 10 hours of meaningful activity per day, including at least one hour of physical activity per day and 15 hours of education per week,<sup>2</sup> in 2014 education contracts doubled the education hours YOIs should provide, to 30 hours per week.<sup>3</sup>

The data shows us that, across all YOIs, access to time out of cell has been severely limited due to the pandemic. On average, the situation seems to have improved slightly since the outset of the crisis but remains concerningly low overall. We reported in May 2020 that based on the evidence available at the time, children were spending between 40 minutes and three hours out of their cells per day, with significant variation between YOIs.<sup>4</sup> This finding was consistent with that of the HMCIP in April 2020.<sup>5</sup> The indicative data suggests that by August 2020 children spent an average of only 3 hours 20 minutes per day out of their cells, increasing to an average of around 4 hours in January 2021. Taking an average across all days, however, obscures the large differences between the timetables available to children on weekdays versus weekends.

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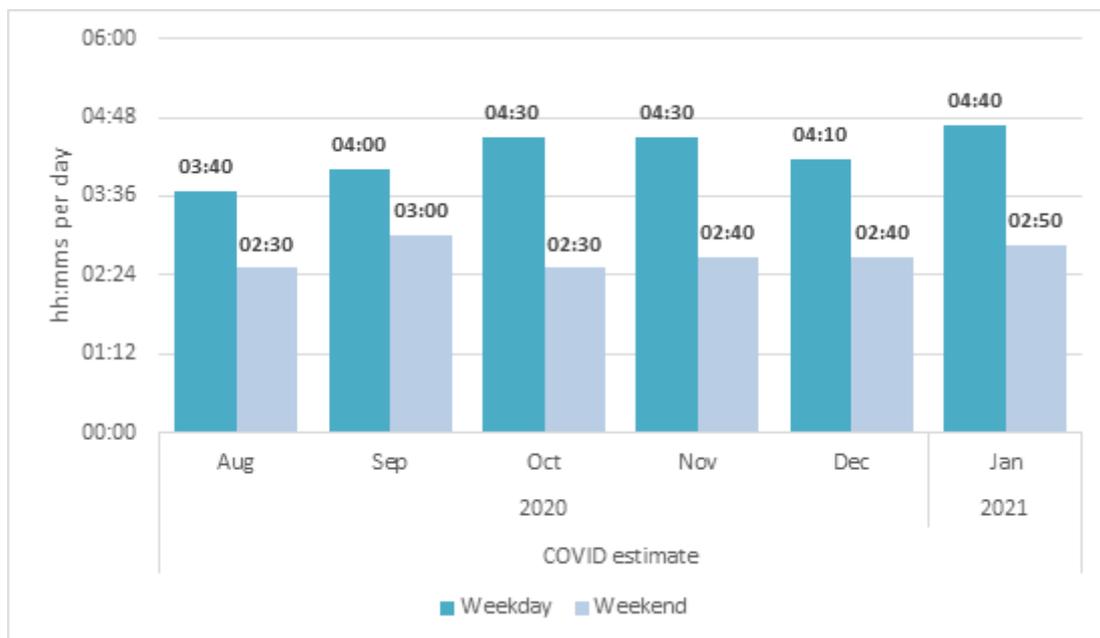
<sup>2</sup> <https://www.legislation.gov.uk/uksi/2000/3371/made>

<sup>3</sup> <https://www.gov.uk/government/news/30-hours-education-a-week-for-young-offenders>

<sup>4</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/12/cco-injustice-or-in-justice.pdf>

<sup>5</sup> <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2020/05/YOIs-SSV-Web-2020-1.pdf>

Figure 1 – Estimated average time out of room per young person for weekdays and weekends, for all YOIs excluding Feltham B, August 2020 – January 2021



The information we have suggests that the average time children spend out of their cell on weekdays has increased by about 1 hour during the period, from around 3 hours 40 minutes in August, to around 4 hours 40 minutes in January. However, average time out of cell at the weekend appears to have increased by only 20 minutes over the same period (Figure 1).

The averages across all YOIs hide some significant variation between timetables offered. One institution reported providing almost 6 hours out of cell on weekdays on average in January, well above the average of 4 hours 40 minutes. Similarly, at weekends this institution reported providing 4 hours 16 minutes out of cell on average per day at weekends, compared to the average of only 2 hours 50 minutes.

The issue of limited timetables at the weekend is not new – in our weekend visits to YOIs before the pandemic some children reported they were often in their cells for in excess of 22 hours per day at weekends.<sup>6</sup> This is consistent with the HMIP survey finding that only 27% of children in YOIs reported spending longer than 2 hours out of their cells at weekends in 2018/19.<sup>7</sup>

COVID-19 has had a significant impact on staffing levels and the ability for a YOI to deliver a full regime, which is a contributor to the limited time out of cell on average month to month. There have been multiple COVID-19 outbreaks in YOIs since August which have resulted in some weeks of significantly reduced timetables due to a lack of staff on site. Where there is an active COVID-19 outbreak in YOIs, the timetables have been further restricted to limit spread amongst the staff and young people. Even when there is not an active outbreak, timetables are restricted to minimise the chances of the virus being transmitted.

However, even accounting for staff absences, timetables offered to children remain too restricted. The recent HMIP report about the effect of Covid-19 on the custodial estate concludes that the

<sup>6</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/12/cco-injustice-or-in-justice.pdf>

<sup>7</sup> <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>

*“cumulative effect of COVID-19 restrictions on prisoners’ well-being and rehabilitation was likely to be significant and far-reaching. [and]... could be profound for prisoners and the communities to which they ultimately return.”<sup>8</sup>*

In the context of Covid-19, it is reasonable that additional restrictions are in place to keep children and staff safe. However, there needs to be a higher level of ambition to relax restrictions in custody, to bring the timetables closer to the expectations pre-pandemic. This should be a call to action for the Ministry of Justice to ensure adequate additional resourcing, so that the ultimate offer to children is increased, and that staffing issues do not result in children being unable to leave their cells.

Furthermore, it is essential that the experience of children in YOIs during the past 12 months is considered in any discussion regarding recovery packages for children. Services essential to the rehabilitation of children such as education, access to work schemes and physical activity have been severely restricted during the pandemic. The information provided to us shows that the challenges have continued long past the first lockdown in March and that restricted timetables are likely to be the norm for some time yet whilst vaccinations are rolled out. The positive and negative experiences throughout this period must be central in discussions about plans for the future of the custodial estate.

Many of the challenges have been laid out in this briefing (as well as in the one we published in May), but it has not all been negative. Children have reported feeling safer in smaller groups,<sup>9</sup> experiencing less intimidation from some of their peers. Staff have felt freed from some of the rigmarole of the normal prison routine of moving children from a to b, remarking this allowed them to focus on building better relationships. The research commissioned by the YCS to better understand the experiences of children during the pandemic will be a crucial piece of evidence for the plans to reform custody post-pandemic. It is vital though, that recovery does not just mean providing these children with access to a full timetable, but a concentrated effort to assess any of the damage caused by the pandemic, and ensuring sufficient additional resources are available to help children recover.

## Oakhill STC

There are examples of better practice in the secure estate. A recent monitoring report from Ofsted and HMIP show that the offer to children in Oakhill is far better developed than that available to children in YOIs.

Children on the main units could access 5 hours of education per day, plus an additional 2 hours of association time on the units in the evening. For those who were newly arrived the offer was somewhat restricted for an initial 14 day period (to reduce risk of cross infection), though they still accessed a minimum of 3 hours out of cell per day. While they were locked in their cells, staff checked on them either at five or 15 minute intervals, dependent on their initial risk assessment. Furthermore, children reported feeling safe, and the inspection found children to be well supported by staff with whom they had good relationships.

Source: <https://files.ofsted.gov.uk/v1/file/50158908>

<sup>8</sup> [https://www.justiceinspectores.gov.uk/hmiprisons/wp\\_content/uploads/sites/4/2021/02/What\\_happens\\_to\\_prisoners\\_in\\_a\\_pandemic.pdf](https://www.justiceinspectores.gov.uk/hmiprisons/wp_content/uploads/sites/4/2021/02/What_happens_to_prisoners_in_a_pandemic.pdf)

<sup>9</sup> Though others express concern about how this may impact their ability to cope with challenging social interactions in the future. See HMIP report linked above.

## Education

Education in prisons should serve to support children's rehabilitation; improve their life chances; increase educational opportunities and skills and increase employability and therefore help to prevent reoffending. Perhaps more importantly in the context of the Covid-19 pandemic, however, is the profound impact 'education hours' have on the capacity of establishments to deliver time out of cell. This time is also crucial in providing children with meaningful human interaction. This is reflected in the fact that children have so much less time out of their cells on weekends when education is not offered.

Positively, since July there has been some form of face-to-face education for children across all sites.<sup>10</sup> This provides children with some structured activity outside of their cells each day. It is welcome that the YCS has committed to maintaining education in the face of the national lockdown, though this commitment was not replicated across the rest of Government. Children in custody are not currently included on the 'vulnerable' list of children who can continue to have face to face education, and there is no mention of them in guidance from the Department for Education, unlike children attending hospital schools. The Department for Education has a responsibility for the education of all children, including those in custody, and must ensure that they are as able as other vulnerable children to receive in-person education. In the event of any further lockdowns the Government must support the YCSs' commitment and include children in custody on the vulnerable list.

Some settings have remarked that during the Covid-19 period they have had welcomed flexibility in how they structure timetables, without rigid expectations about the hours of education that must be delivered. One Governor welcomed the flexibility granted, explaining that breaking from the rigid pre-Covid structure allowed them to deliver other activities like sports, in addition to education, which the children enjoyed. This reflection is useful in thinking about how education can be reformed in the recovery period – which the YCS are currently considering. It is important, however, that any increased flexibility does not result in children losing valuable time out of cells, or essential entitlements to learning. Using any additional time to deliver other activities, necessary life-skills and interventions to children may prove to be a useful deviation from the pre-Covid structures, though any planned changes must be informed by the views of children in custody.

## Visits

During the first lockdown, in-person visits were stopped for children in many settings, meaning they went for months without seeing family. The principal of providing children with meaningful access to family during this period is now well established across many sectors. Children in the community are allowed to travel between the homes of separated parents – and parents are permitted to travel to facilitate this<sup>11</sup>. NHS England has confirmed that all children in inpatient care must be able to receive family visits. And current guidance also allows for children in care to continue to have face to face contact with their families.<sup>12</sup>

Family visits had started up again in custodial establishments over the summer, and a great deal of work was undertaken to ensure they could go ahead in a way that was safe for children, families and staff. During the current period of restriction, the YCS are encouraging virtual visits in the first instance. In a recent letter, the Executive Director for the Youth Custody Service stated that:

*"We are also aware that social visits contribute to wellbeing, so this will take place virtually in*

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<sup>10</sup> Lucy Frazer's evidence to the Justice Committee: Oral evidence: [Children and young people in custody](#), HC 306

<sup>11</sup> Under Schedule 3A, Part 1, Paragraph 2 (13)(a) of The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020.

<sup>12</sup> Department for Education (DfE), Coronavirus (COVID-19): Guidance for children's social care services, 7 January 2021

*the first instance, unless there are compassionate grounds for it to take place face-to-face which will be based on a case by case assessment.”*

It is the Children’s Commissioner’s view that children in custody should receive comparable access to family visits as their peers who are also living away from home. It is clear that in some instances, face to face visits may not be possible, for example if there is a large outbreak at a site. In other instances, children may also prefer virtual visits. However, it is important that face to face family contact can still go ahead for children who prefer this type of contact whenever possible.

## Conclusion

Some progress has been made during the pandemic to improve the conditions children are facing in custody, nevertheless, the current offer to children, particularly in YOIs, is not always sufficiently ambitious. The prison estate – and by extension Government – acts in loco parentis for children in custody, and a parent would be rightly chastised for keeping a child in such conditions. While individual establishments and staff working within the system are often trying to do their best by children within the constraints of HMPPS and YCS policy, there is significant variation in practice, and expectations are still too low. The situation at Rainsbrook STC is also a clear example of where local implementation of YCS policy can go disastrously wrong.

It is without question that more has to be done during this pandemic to improve the offer for children in YOIs in England in particular, bringing them in line at least with what is available in Parc YOI in Wales (where children consistently access around 6 hours out of cell per day), but aspiring to a more generous timetable, like the one in Oakhill STC. This is no small feat, given the different challenges on the ground in each institution, be that physical infrastructure, cohort size or the impact of Covid-19 outbreaks in sites (which understandably limits what is possible in the short-term). To do this the YCS must think outside of the box in order to deliver additional activities across the estate – particularly on weekends - to give children better access to meaningful interaction with others, albeit in smaller groups. There appears to be support amongst governors for a more flexible approach. The HMIP report in July found that:

*“...children who were not isolating for any specific reason had unacceptably little time out of cell. If there were to be a resurgence of the virus, other means of controlling its spread that would not carry such a high risk of causing long-term harm to those in custody, and which would not risk them being held in conditions that meet widely agreed definitions of solitary confinement...should be explored. **We have met many governors and managers who are convinced this would be achievable.**”<sup>13</sup>*

In particular:

- > The level of ambition for relaxing conditions in the children’s secure estate must be raised. There have been welcome relaxations since the early stages of the pandemic, though this has been inconsistent across the estate. Progress must be expedited in all YOIs. Funding should be made available for additional staff, including youth workers, if current staffing levels will not allow for sufficient time out of cell across all YOIs.
- > Funding should also be made available to ‘level up’ the provision for children, to help them recover from the toll of this difficult year, similar to the funds available to children in the

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<sup>13</sup><https://www.justiceinspectores.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/08/SSV-aggregate-report-web-2020.pdf>

community for Covid recovery.

- > Staff working in the children's secure estate (as well as others working with children) should be prioritised for vaccination, supporting staff to deliver a more ambitious timetable for children.
- > If it is not possible for the existing compliment of staff (and any additional resources made available) to deliver an acceptable offer to children in custody, the population of the estate must be reduced through measures such as early release.
- > It is also imperative that children in custody continue to be able to access visits from family during this time, both through digital and in-person means. In-person visits should be available to all children and families who prefer this type of contact.
- > From the 8<sup>th</sup> March, the offer of education to children in custody must start to further increase, in line with the offer to children in the community.
- > The Department for Education has a responsibility towards all children, including those in custody, and must ensure that they are as able as other vulnerable children to receive in-person education. In the event of any further lockdowns, Children in custody should be added to the Department for Education's list of 'vulnerable' children, and like children attending hospital schools, should be specifically mentioned in the guidance.