

# Crises and crossroads for the children's secure estate

## Resisting child imprisonment and rethinking youth custody post-pandemic

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### About this briefing

**This is the third in a series of three policy briefings by the Alliance for Youth Justice to explore the challenges and opportunities created by the impact of the COVID-19 pandemic on children and the youth justice system.**

It draws on a comprehensive [literature review](#); interviews with national stakeholders; consultation sessions with AYJ's [members](#) and Young Advocates; and [a series of research papers](#) based on extensive research by our project partners at Manchester Metropolitan University (MMU).<sup>1</sup> The [first briefing](#) focussed on preventing a surge in the criminalisation of children, and the [second briefing](#) explored the critical juncture for youth justice.

This briefing considers the significant challenges facing the children's secure estate, outlining the context of existing failures pre-pandemic, the significant risk of harm to children in custody as a result of the pandemic, and the projection that the number of children in custody will steeply rise. It calls for a clear vision for children in custody, urgent action to repair the harms of the pandemic period, rethinking standards of care, and working to prevent the number of children in custody increasing.

### About the research project

This research project aims to understand the unprecedented implications that the COVID-19 pandemic has had on each stage of the youth justice system. Delivered in partnership between the Manchester Centre for Youth Studies (MCYS) at MMU and the Alliance for Youth Justice (AYJ), the project is funded by the Economic and Social Research Council as part of the UK Research and Innovation's rapid response to COVID-19.

### Introduction

The number of children in custody has fallen significantly for more than a decade and is currently at a historic low. Between March 2010 and March 2020, the number of children in custody fell 68%.<sup>2</sup> During the pandemic, numbers declined further – falling 43% between March 2020 and March 2022, to 422 children.<sup>3</sup>

However, the children's secure estate continues to face multiple crises. The decline in recent years has not seen a commensurate improvement in the treatment and experiences of children in custody, custody continues to be used not solely as a last resort,<sup>4</sup> and the government expects the number of children in custody to more than double in coming years.<sup>5</sup>

Children's experiences in custody during COVID-19 have been bleak.<sup>6</sup> Children in Young Offender Institutions (YOIs) and Secure Training Centres (STCs) in particular have been side-lined and failed. A lack of focus on children in custody during the pandemic, and a lack of ambition for the children's secure estate, combined with concerning projections for future custody numbers, raises significant concerns that conditions and outcomes for children in custody will go from bad to worse.

The children's secure estate is at a crossroads. There are valuable lessons to be learnt from experiences during the pandemic around oversight, governance, and standards for children in custody, but there is also a risk that pandemic practice becomes embedded prior to understanding impact.

With a clear vision and commitment to these children, their relatively small numbers presents an important opportunity to improve outcomes. Urgent action is needed now in order to reset cultures and defy concerning projections.

## **A failing estate pre-pandemic**

The secure estate was drastically failing children even before the pandemic hit.

In 2017 the Chief Inspector of Prisons declared that no YOI or STC was safe to hold children,<sup>7</sup> while the Youth Custody Improvement Board (YCIB) published its findings that the children's estate was 'on the edge of coping'.<sup>8</sup> In the years that followed, up to the pandemic, levels of violence, self-harm, restraint, and separation increased.<sup>9</sup> The YCIB recommendations called for a clear vision for the youth custodial estate and a consolidation of existing structures,<sup>10</sup> but five years on, despite most of the recommendations being deemed 'fully achieved' by HM Prisons and Probation Service (HMPPS),<sup>11</sup> children's experiences in custody have continued to worsen.

STCs in particular are mired in crisis. Inspection reports have noted continued and increasing concerns across STCs since the Chief Inspector's above declaration.<sup>12</sup> In the years prior to the pandemic Medway STC was closed due to concerns about safety and abuse, and in December 2021 Rainsbrook followed suit due to significant concerns about safeguarding and care of children.<sup>13</sup> The remaining centre, Oakhill, has been placed under special measures due to significant concerns about the safety and welfare of children.<sup>14</sup>

HMPPS considers all STCs to have failed to meet good standards of safety and care since 2017.<sup>15</sup> The impact of the failure of STCs for children is significant, not only because it means children are being held in settings that are failing to meet standards of care and keep them safe, but also because the closures and special measures mean that children are now being placed in YOIs who were previously considered too vulnerable to be. It has even led to girls being held in an all-male YOI.<sup>16</sup>

Prior to the pandemic children's experiences in YOIs were characterised by limited time out of cell, receiving 'far less' education than entitled to; increasing violence; increasing use of force and the continued use of pain-inducing restraint; concerns about access to purposeful activity and release planning; and significant concerns about separation, including that it amounted to solitary confinement for most separated children, prolonged for some children.<sup>17</sup>

There have long been calls to maintain or scale up Secure Children's Home (SCH) provision, as the alternative to placing children in STCs and YOIs, given SCHs most closely reflect welfare-based and Child First provision, with smaller establishments and higher staff-to-child ratios.<sup>18</sup> However, SCH provision has decreased in recent years, and there is a national shortage of beds.<sup>19</sup>

In 2016, in response to Charlie Taylor's youth justice review, the government confirmed it would create two Secure School pilots, a new form of custody designed to align more closely with schools rather than prisons.<sup>20</sup> Six years on the first pilot is yet to open, and is expected in November 2023, over three years delayed.<sup>21</sup> There has been no progress on the second pilot, which has not been funded by the Ministry of Justice.<sup>22</sup>

## **The profile of children in the secure estate**

40% of children in custody are on remand,<sup>23</sup> awaiting sentencing, and prior to the pandemic two thirds of those on remand did not go on to receive a custodial sentence.<sup>24</sup> In the first year of the pandemic, this rose to three-quarters who were either acquitted or given a community sentence.<sup>25</sup>

Over half of children in custody are from ethnic minorities,<sup>26</sup> who are consistently subjected to worse treatment and outcomes.<sup>27</sup> The population is extremely vulnerable.<sup>28</sup> Over half of children in custody have experience of the care system.<sup>29</sup> Children sentenced to custody are more likely to be eligible for Free School Meals, have Special Educational Needs and Disabilities (SEND), and to have been absent, suspended, and excluded from school than other children in the youth justice system.<sup>30</sup> Data on the assessed needs of children sentenced to custody shows: 81% have mental health concerns; 77% have Speech, Language and Communication needs; 76% have issues around Learning, Education, Training and Employment; 54% have assessed physical health concerns; 86% have substance misuse issues; and 98% have assessed concerns about their safety and wellbeing.<sup>31</sup> Children sentenced to custody have higher numbers of 'concerns' present compared to other children in the justice system.<sup>32</sup>

It is clear that children's needs were not being met in the pre-pandemic custodial environment, and there were significant risks of children suffering emotional, psychological and physical harm, as well as long-term impacts on education, employment, family life, mental health and wellbeing.<sup>33</sup>

# Challenges ahead for the children's secure estate

## Impact of pandemic experiences on children and staff

Experiences in custody during COVID-19 have been brutal for both children and staff. New practices have been developed and cultural norms have shifted, creating both significant risks and opportunities.

***“The brutality of prisons has increased, it has multiplied”*** – Director of Children's Rights charity and social worker

The project literature review provides a detailed overview of the impacts of COVID-19 on children in custody.<sup>34</sup> Project research papers explore children's experiences in custody during the height of the pandemic, providing detailed case studies from both an English YOI<sup>35</sup> (YOI X) and an English SCH<sup>36</sup> (SCH A).

***“You can name probably all of the things that we know as a general principle don't work well in custody and COVID has made it worse”*** – Associate, prison reform charity

Children in YOIs and STCs were initially subjected to awful conditions for months on end, deprived of education, visits and contact, and amounting to solitary confinement. Their experiences were characterised by poor in-cell provision and withdrawal of support services, with significantly disrupted communication, case management and resettlement work.<sup>37</sup> These findings are echoed by national stakeholders interviewed for this project, and similar concerns are raised across the research about how long it has taken for regimes to pick back up, and what the long term impacts will be.<sup>38</sup>

***“As the journey of the pandemic has moved, there's very, very, very slow progress in moving to a non-COVID way in custody, or at least not moving at the pace that has been seen in the community”*** – Senior Official, YJB

A recent Criminal Justice Joint Inspection (CJJI) progress report on the impact of COVID-19 found that recovery in the children's secure estate has been “slow and inconsistent”, that education provision recovery was concerning, and access to purposeful activity remains not good enough, in all but one YOI.<sup>39</sup> Recent HMI Prisons inspection reports such as that of Werrington YOI present distressing findings about levels of violence, time out of cell, and access to education.<sup>40</sup>

While it is generally understood that overall SCHs fared far better than YOIs and STCs during the

pandemic, and much of this paper focuses on learning lessons around YOIs and STCs, concerns remain about the impact of the pandemic for children in SCHs. Children in the project case study, SCH A, also had contact and visits impacted, education disrupted, and release and resettlement planning significantly affected.<sup>41</sup>

***“During the pandemic, secure children's homes have done a good job in general in the care of the children that they've had, and have still... Yes, they've had challenges...but generally, we would say they've done a very good job. This is in stark contrast to our STC reports, and HMIP's YOI reports.”*** – Senior Officer, Ofsted

### Exacerbated mental health needs

The impact of restrictions, isolation and uncertainty on the mental health and wellbeing of children who have experienced custody during the pandemic, including inducing and perpetuating trauma, is a significant concern for national stakeholders, practitioners,<sup>42</sup> and the inspectorates.<sup>43</sup> Research on prison lockdown, not specific to children, has highlighted significant impacts on mental health.<sup>44</sup>

***“I think the impact on young people's mental and emotional well-being has been really significant throughout the pandemic, and even more so if you're not with your family, if you're not with your trusted professionals, if you're not even accessing those people that you used to feel safe around.”*** – Director, Research in Practice

This is particularly important at a time when access to support has been severely disrupted for many. For example, health care regimes including mental-health provision in YOI X – the project case study – had only resumed to ‘near normal capacity’ by December 2021.<sup>45</sup> Practitioners are particularly concerned about the impact on children with pre-existing mental health diagnoses.<sup>46</sup>

***“We saw health services taking a step back...a lack of face-to-face interventions. We saw some psychological services take a huge step back as HMPPS withdrew psychological services from establishments. Children who were on fairly substantial care packages in custody suddenly found themselves on Friday with quite a lot and then on Monday morning with not very much at all.”*** – Senior Official, HMI Prisons

In the face of widespread concern about the wellbeing of children in custody, the government reported that rates of self-harm reduced during the pandemic.<sup>47</sup> Staff in YOI X felt self-harm had reduced for two main reasons. Firstly, due to changes in children's feelings of safety, feeling more protected from potential violent incidents. This raises questions around the relationship between self-harm and violence in the secure estate, and how this should be managed moving forward given increasing the isolation of children is not an acceptable solution to reducing self-harm.<sup>48</sup>

***“The really sad thing is that the boys say that they felt safer in lockdown because they don't have to worry about who they're going to come into contact with” – Youth custody practitioner***

Secondly, adaptations to the enhanced privileges scheme, with the provision and revocation of 'privileges' such as TVs changing during the pandemic, highlighting the need for closer examination of the impact of behaviour management frameworks on children's wellbeing.<sup>49</sup>

***“Lots of self-harm in children's custody is things like head-butting the wall, punching the wall as well as cutting... Some of the incidents that might have led to that in the past like someone coming into your cell and taking your telly didn't exist in COVID because we didn't do that, we didn't run incentive schemes really, so there could be something in that” – Senior Official, HMI Prisons***

Nationally, the rate of self-harm incidents decreased in the year April 2020-March 2021 compared to the record high the previous year, but remained higher than the rates in the years before that.<sup>50</sup> As the pandemic has gone on, the rate of self-harm incidents and the proportion of children self-harming have both increased each year.<sup>51</sup>

***“I think the most significant impacts have been isolation. It has been demonstrated that long term isolation on children who are still developing is incredibly problematic for their wellbeing and their development” – Youth justice lawyer***

The long-term impacts on the social, emotional and neurological development and mental health of children who remain in custody, and those who were held in custody during the pandemic and have since been released, are yet to be realised.<sup>52</sup> National stakeholders are concerned about the potential long-term health implications of the increased brutality and trauma of custody due to the pandemic, as well as the potential for those experiencing this trauma to harm themselves or

others. National stakeholders are concerned about how children released from custody are being identified in the community and what extra support they are being offered considering their adverse experiences of custody during COVID-19.

***“The experience of being in custody is in itself traumatic but the experience of being in isolation, not having the human interaction but also in isolation from their own families.. not able to get in touch with their family, with their lawyers...I think that is something that has an impact both right now on the child, on their mental state but also having longitudinal impact that we are not even fully aware of” – Youth justice lawyer***

### **Risks and opportunities for regime change**

The already low benchmark of care and provision for children in custody was dramatically impacted by the onset of COVID-19 restrictions, and there is a risk that the pandemic has shifted views of what is considered an acceptable regime for children.

***“The challenge is to get lots of people who are working and living in these sites to understand that this isn't normal, it's not normal for children to be locked up for 19, 20 hours a day during the week and 22, 23 hours a day during the weekend. That might be what's happened for the last 18 months but it's not something to be aspired to” – Senior Official, HMI Prisons***

This is a particular concern for new staff that have only experienced custody during the pandemic, and therefore may have skewed perceptions of acceptable standards or what they should be striving for. Around 40% of staff recruited by YOI X during the pandemic have no experience of a pre-COVID regime.<sup>53</sup>

***“We've got a least two governors who joined the YCS who are leading two sites who knew nothing but COVID...right through to prison officers who know nothing else other than COVID....that is an interesting cultural challenge, isn't it, in terms of experience and how people...what expectations they have” – Senior Official***

National stakeholders noted with disappointment and concern the withdrawal or scaling back of external service provision at a time it was critically needed, and the disparity between the slower reinstatement of services in custody compared to in the community. There are lessons to be learned about commissioning and standards for these providers, what type of support needs to be available to children, and how interventions should be provided. Similar consideration is needed for

maintaining and improving education provision, given failures during the pandemic and in recovery to provide appropriate levels of education and the long-term impact this will have on children. A planned inquiry into education in the children's secure estate by the Education Select Committee, accompanying their current inquiry into prison education,<sup>54</sup> is a key opportunity to explore this.

***“We’ve already deprived them of their liberty and we’re now depriving them of some of their most basic, basic needs. Access to education, access to pastoral care, access to wider support services, all the stuff that happens in the communities but amplified, magnified, heightened for those young people who’ve had their liberty deprived already.” – Director, Research in Practice***

The pandemic practice of unlocking children from their cells in very small numbers, termed ‘family groups’, to take part in education and purposeful activity has had mixed impacts.<sup>55</sup> National stakeholders call for lessons to be learnt about children's feelings of safety, receiving more tailored care, and relationships with staff improving. However, concerns are also raised about conflict between groups, the difficulties for staff in managing lots of small groups, and children spending longer in their cells.<sup>56</sup>

***“On the small groups, I think that worked really well in terms of the boys building relationships with each other and with staff... But they’ve got a history of having rivalries anyway... there was conflict between the groups ... one group would come out and refuse to go back in because they didn’t want the other group to come out. It just turned into a huge mess” – Youth custody practitioner***

***“In the absence of extra resources...if you are designed to provide services to children in tens or 15s or sevens, to suddenly provide it in twos or threes then you’re simply providing less to each group...It’s more work for staff that deliver less for children” – Senior Official, HMI Prisons***

There are also concerns that prison officers have become used to only managing small groups, and a lack of confidence, particularly among new staff, in managing larger numbers of children who are not locked up in their cells.<sup>57</sup> There is a potential increased risk of violence considering the trauma experienced by children in custody during the pandemic, with a prison officer group that is not experienced or equipped to respond to it. There are important implications to consider for the need for the overall size of establishments to be small, and a workforce with the appropriate skills and experience.

***“We don’t want the moral to be that children are spending more time in their cells and only be taken out in small groups. But I think something about the small groups has been a more supportive environment for children ... I think some of the lessons from that should be looking at smaller units altogether” – Senior civil servant***

There are significant risks that pandemic standards and practice will become embedded without fully understanding the impact, or that institutions will slip back into pre-pandemic ways of working that were detrimental to children. Evaluation is needed. However, in recovering, there is also an opportunity to think more radically about what regime and service provision should look like for children. National stakeholders and those working in YOI X highlighted similar keenness to capitalise on this opportunity to rethink and reset the purpose of the secure estate for children.<sup>58</sup> YOI X, for example, is redeveloping its education provision.<sup>59</sup>

***“I think what COVID has done is created a softening of the icebergs, of prison service culture and I still think we’re in that kind of slushy bit in the middle where we’ve got a chance to reset the cultures before things refreeze again. I think that window of opportunity’s closing....” – Senior Official***

The projected rise in numbers of children in custody, concerningly asserted by the Ministry of Justice and HMPPS,<sup>60</sup> is even more alarming considering the increased pressures this will put on those working in the children's estate who have already experienced significant difficulties during the pandemic period.<sup>61</sup> This would risk jeopardising any work to improve standards for children, strengthening the argument that this projected expansion in numbers should be interrogated and strongly resisted. Investment is needed in staff, to improve retention, to ensure all staff have the skills they need, and to ensure the workforce culture is child-focussed. Investment is also needed in building strong leaders and governors, with national stakeholders and inspection reports<sup>62</sup> highlighting that where there are stronger leaders and better management in certain establishments, these were better able to manage the response to the pandemic.

***“I think the most important people, the agents of change in these institutions are prison officers...Until we realise that and resource the prison officers better and make sure that there are sufficient of them, that they want to do the job that they’re employed to do and that they’re supported appropriately by managers, I don’t think we’re going to get anywhere” – Senior Official, HMI Prisons***

### Contact, visits and the use of technology

Changes to visits and contact due to the pandemic provide an important opportunity to radically rethink desired levels of contact.

***“Technology should be used so that kids can speak with their family by video link when they need to and when they can and that should be done not to replace in-person visits but it should be thoughtfully implemented to improve family contact” – Youth justice lawyer***

While face to face visits resumed after a prolonged ban, take-up of these visits remains lower than pre-pandemic, with children citing COVID-19 restrictions as a key reason for this.<sup>63</sup> Take-up of Purple Visits – secure video calls – has also not been as high as it could be for various reasons including organisational issues, and a lack of privacy.<sup>64</sup> Phone calls have increased, but children and practitioners have raised concerns about the high costs, with children in YOI X burning through large amounts of credit, questioning why rates are far greater than those in the community.<sup>65</sup>

***“Considering the cost of phone calls outside the establishment, the cost of [children’s] phone calls is criminal really” – Practitioner in YOI X<sup>66</sup>***

Given the importance of family relationships in desistance<sup>67</sup> and effective resettlement,<sup>68</sup> contact and visits must be prioritised, and children enabled to speak to their support networks as much as they need. The fast-tracked rollout of technology is a useful addition, as is the now-universal access to in-cell phones. However, national stakeholders are clear these forms of contact should be in addition to, rather than instead of, face-to-face visits. Issues around access and costs to children need to be considered moving forward,<sup>69</sup> and work is needed to increase take-up of visits where it is low, before visiting slots are potentially cut because they are not currently being used.

***“You can’t get positive engagement that way. We can’t see how children are. We can’t see whether they’re coping. There’s no serious engagement with the process” – YOT practitioner***

Contact with outside agencies such as youth offending teams (YOTs) and lawyers has also been impacted as above,<sup>70</sup> raising concerns among national stakeholders and practitioners about maintaining or building relationships, access to children, oversight of children’s experiences, children’s input into sentence reviews and pre-sentence reports, and resettlement and release planning.<sup>71</sup> Lawyers have raised concerns about remote advocacy particularly in adjudications and parole board hearings. Regarding the use of

technology among staff, practitioners in YOI X welcomed technology in improving elements of partnership working.<sup>72</sup> Again, while technology can be a helpful additional form of communication between children and those supporting them, it should not replace in-person engagement. Evaluation is needed to consider the impact of the use of technological means of communication on children and staff.<sup>73</sup>

***“For children in custody there was a real sense of real isolation. And I think, certainly for professionals, there was that concern about not being able to have those eyes and ears, and have those conversations that we would ordinarily have with our children in custodial establishments.” – YOT Manager and AYM representative***

### Release and resettlement

Inspectorates are concerned those in custody during the pandemic are not properly prepared for release, having experienced disrupted education and reduced socialisation.<sup>74</sup> Children in custody during COVID-19 have not had the usual access to activities, including Release on Temporary License (ROTL), that evidence progress and contribute to sentence progression. National stakeholders raise concerns about this inability to show progress or demonstrate change unjustly impacting children’s eligibility for early release.

***“Any sentence whereby in order to be released you go through parole, you need to demonstrate that you’ve done certain offending behaviour work to reduce your risk...children just haven’t been able to do that work...definitely really detrimental impact on the possibility of release for children who otherwise possibly would have been able to demonstrate that they met the test...A child’s ability to demonstrate their maturity or their change in behaviour was also removed because it was like, “Well of course you haven’t got into any trouble, how could you?”” – Youth justice lawyer***

Resettlement of children leaving custody was a concern pre-pandemic,<sup>75</sup> and national stakeholders raise concerns about the need for extra support to be made available to address the lack of education, intervention and support that has been available while they are in custody. Without these improvements, there is an increased risk children may end up returning to custody.

### Exacerbating discrimination and disadvantage

Any child experiencing custody during the pandemic would have faced significant challenges, but given the prevalence of vulnerabilities and trauma among the population of children in custody, there are particularly great risks of significant, long-term harm. Racially minoritised children, children with care experience, and children with SEND - disproportionately represented in custody - will be disproportionately impacted, compounding their previous experiences.

*“Obviously, there is the characteristics of children who end up in prison, over half are children from black, Asian minority ethnic communities, they are disproportionately remanded. Children with learning disabilities, children from the care system, children with mental health problems. So if you start from the base that these are not places where children who generally have had their needs met and have good lives and good support and are secure and loved and happy. Generally speaking, children in those circumstances would still be harmed in prison. Then look at who are the children that we end up putting into a tiny locked room for 23 and a half hours a day in the middle of a global pandemic? It’s black children, it’s boys, it’s children that have had year upon year of their needs and rights not being fulfilled. It’s children who are disabled, children who have mental health difficulties. It’s*

*the children that you would most want to protect in normal circumstances” – Director of Children’s Rights charity and social worker*

Racially minoritised children may also be disproportionately impacted by the reduction in oversight of children’s experiences in custody, given they are more likely to report mistreatment from staff and feel their treatment is unfair, including the response to their complaints.<sup>76</sup>

Self-harm among children with SEND in YOI X increased while overall incidents were reducing, and children with Autism Spectrum Disorders were particularly impacted by regime changes.<sup>77</sup> Children with SEND may particularly struggle to understand and engage with professionals and their support networks using virtual means.

*“It always goes straight to my heart that you can see disproportionately, it’s disabled children, it’s children who have been in care, who are more likely to choose to spend time in their cell. It’s because they’re more frightened.” – Director of Children’s Rights charity and social worker*

Children with care experience and racially minoritised children, whose previous negative experiences with authority can lead to greater levels of distrust, may be disproportionately disadvantaged by the onset of virtual engagement with professionals and the associated issues in building trust and rapport.

## Failures in strategy

There is no clear central plan or ambition for the children’s secure estate. The pandemic response has demonstrated why this is so critical, and raised questions about leadership, oversight and structure of the estate.

*“For vulnerable children in the care of the state, deprived of their liberty, I think it’s exposed a lack of real strategy to ensure that those children are looked after and cared for...it’s really underlined that those systems are not fit for children.” – Director of Children’s Rights charity and social worker*

### A lack of vision and child-focused management of youth custody

In 2016 the government committed to closing all YOIs and STCs in the long-term,<sup>78</sup> and a 2022 publication issued about Secure Schools confirmed that the vision remains to replace YOIs and STCs with Secure Schools and “similar smaller units”.<sup>79</sup>

Yet progress on just one Secure School is extremely slow and delayed,<sup>80</sup> and there is no plan of action from the Youth Custody Service (YCS) that sets out its future intentions and timeframes. With the first and currently only Secure School due to open in 2023, there will be four different types of provision for what is currently four hundred children. In fact, the Secure School will arguably be the fifth type of provision for children in custody, given the Keppel complex needs unit at Wetherby YOI is a unique facility including different set up and admission criteria. The estate is described by national stakeholders as an “accident of history”, and there is no clear strategy about how such a disjointed estate will fit together and meet the needs of children. At a time when children’s experiences in custody are so dire and children’s safety and wellbeing is at risk, achieving this vision should be a priority.

***“One of the continuity stories of child prisons is that patience and tolerance of policy makers is infinite, that they do just tolerate scandal after scandal, after scandal.”*** – Director of Children’s Rights charity and social worker

Responsibility for youth custody sits within the YCS, under the umbrella of HMPPS, and the relatively small size of the children’s estate compared to adult prisons makes it a minority among HMPPS’s responsibilities.

***“It is still a service that is managed within the prison service rather than one that is focused on how you support children”*** – Senior Official, YJB

Despite the clear need to view and treat the children’s estate differently to adults, the HMPPS prison service culture has a strong influence, on YOIs in particular, with national stakeholders highlighting that children in custody are too often treated as ‘mini-adults’ rather than children. National stakeholders also highlight that as YCS commission some SCH placements but responsibility and regulation for SCH’s and wider secure children’s placements sits with the Department for Education, SCHs can face similar but different issues in being side-lined in responses split across departments.

***“I am not doubting there are not some very passionate people in YCS, who want to make a difference for these kids. But whoever you are, you’ve either got one arm or two arms tied behind your back by HMPPS the whole time.”*** – Senior Official, NHS England

### **An over-centralised pandemic response side-lining children in custody**

The lack of a published YCS strategy and statement of purpose for the children’s secure estate left the door open during the pandemic for the side-lining of children in a government response focussed on adults in prison, making it harder to hold the government to account for its response and challenge the YCS to do better to fulfil a stated mission.

***“The prison system has responded as only the prison system knows how to respond, it has become more punitive and more prison like...It’s exposed, yet again, that there is a glaring hole where there should be senior leadership from people who know about children and know how to look after and protect children well.”*** – Director of Children’s Rights charity and social worker

The HMPPS prison-service mindset has prevailed, and policy and guidance, created for adults, was then applied to children as an afterthought,

reportedly creating difficulties for the YCS and practitioners.

***“A lot of guidance was adult-focussed, as we’re child-focused...a lot of guidance was not applicable to us and didn’t really help us”*** – Senior Management Team, YOI X<sup>81</sup>

***“HMPPS is such a machinery...they were literally churning policies out. And they hadn’t given a thought to the children’s estate. And of course, YCS were unclear, is this SCH? Is this STC? Is this YOIs?”*** – Senior Official, NHS England

Difficulties are also reported for SCHs falling through gaps between HMPPS policies that were applied to the adult and children’s secure estate, and the Department for Education who has responsibility for SCHs. For example COVID-19 testing and Personal Protective Equipment was rolled-out to the rest of the children’s estate via HMPPS, but not to SCHs, and there was reportedly confusion about how SCHs would be provided this.

***“I don’t think the YCS has quite got their act around all that [SCHs]. So of course, when this crisis came, it took ages for them to decide, well, whose policy is this? And it was interesting that we ended up doing the policy for the SCHs in the end because nobody thought they were in charge, I suppose they probably would have loved to have asked us to do it for the YOIs and STCs but they weren’t able to because of HMPPS.”*** – Senior Official, NHS England

For some months the government response for YOIs and STCs simply followed the response for adult prisons, and during the period of time it took for some restrictions in YOIs and STCs to be considered separately to adult prisons, children experienced a particularly disproportionate and damaging pandemic response. Meanwhile, SCHs have been able to take a much more child-centred approach to managing children’s regimes compared to YOIs and STCs.<sup>82</sup>

***“We spent quite a lot of time thinking about how we would start to unlock within the Youth Custody estate and how we would differentiate it from the adult estate. We were able to put an argument forward that actually, because our population were responding differently to the pandemic, and because they were children, that we would want to draw parallels with what was going on in the community...Our challenge was articulating that within the organisation [HMPPS] and them agreeing to us doing something slightly different sat along the adult male, adult female estate.”*** – Senior Official

Individual YOIs attempted to reinstate education early on but were prevented from doing so by HMPPS national directions.<sup>83</sup>

***“What we did see in the English prisons, in the English YOIs is attempts to run education early on that were then swiftly stopped because the National Prison Service didn’t want education to be run” – Senior Official, HMI Prisons***

Parc YOI, a privately run establishment in Wales, was able to maintain a far superior education provision than other YOIs and is reported by national stakeholders to have fared better overall. While multiple factors will have influenced this, including the relatively small size of the YOI, and a different staffing situation including employing teachers in-house rather than through a provider, the ability of the YOI management to make decisions based on its individual circumstances and assessments rather than being constrained by overly centralised national directives, undoubtedly played an important role.

***“Parc did a very interesting thing and I think to be honest with you, managers there made some brave decisions...They made sustained improvements...they never went backwards...they never took anything away, they always added to it. One of the reasons they were able to do that is they didn’t always have to adhere to conditions imposed by gold command” – Senior Official, HMI Prisons***

In response to the pandemic and pressures in custody the government put in place an End of Custody Temporary Release scheme<sup>84</sup> to allow the release of adults and children that met certain eligibility criteria from custody. The emergency release scheme was not suitably tailored to children, and resulted in no children being released. In comparison, UNICEF reports in the first three months of the pandemic 37 other countries released more than 11,600 children from detention.<sup>85</sup> This failed scheme is a clear example of a lack of focus on these children and willingness to take ambitious action. National stakeholders have highlighted that a child-focussed response would have been to assess the needs of each child in custody, develop a child-specific release scheme that took into account mental health impacts of remaining in custody, rather than only physical risks, and considered which children could have been returned to their families or care settings.

***“It’s a huge failure of management because the Youth Custody Service, as a service that is meant to be managing these institutions where***

***very, very vulnerable children are held, failed. Yes. It failed. I mean it was a huge test obviously. Nobody would have expected them to have got everything right. But if you look at how many children were released.. how on earth could that have happened, that no child, out of the several hundred children, that the Youth Custody Service could not find a single child who could manage and be helped to live safely in the community” – Director of Children’s Rights charity and social worker***

### **Implications for the future estate**

The pandemic could have been an important opportunity to take decisive and radical action to remove children from custody and rethink provision, but the opportunity has not been seized. There is a lot to learn from the central response to COVID-19 across the children’s secure estate, and national stakeholders have expressed fresh calls for rethinking which body holds responsibility for children in custody. Since the research took place, the YCS reporting line has moved from the Prison’s Group Director to the Director General of Probation and Wales Probation, within the Ministry of Justice. More information is needed on the rationale for this move and its impact. There are similar calls for lessons to be learnt from how different types of institution have responded, and the implications for the development of the future estate.

***“It was a terrible time and I think reinforced the fact, for me, that HMPPS do not have the right organisational ethos to care for children. And I knew this already, but it’s sort of really focused that the YOIs weren’t fit to hold children.” – Senior Official, NHS England***

Pandemic experiences may suggest that a greater degree of delegation and ability for public establishments to depart from central government directions could improve children’s experiences. Plans for greater autonomy for secure establishments and the creation of governing Boards to support this were explored by previous Justice Secretaries<sup>86</sup> but were since abandoned, and learnings from the pandemic provide fresh angles for consideration. However, greater autonomy relies on strong leadership, and the lack of experienced, child-focussed governors across the estate is a concern for national stakeholders. The new Secure School will have a far greater level of autonomy, and a similar governance structure including an advisory board could be applied to YOIs to support governors.

***“If nationally, the role of government is to create the infrastructure in which localism can thrive, COVID has taught us that, I think, very, very sharply. And I think that might lend itself to some richer discussions about commissioning of placements for children within secure estates.” – Director, Research in Practice***

Secure Schools are being developed to replace YOIs and STCs, and therefore the concept should be tested under the conditions that will prevail. The National Audit Office report on youth custody<sup>87</sup> discloses that as Secure Schools sit under SCH legislation, the pilot site will currently have the right to refuse children. It is currently unclear how the introduction of Secure Schools will fit into the YCS

placements policy and procedures, including the criteria and process for deciding where to place a child. Clarification will also be needed as to whether HMPPS intends to introduce a legal mechanism to enforce placement decisions on the Secure School, in the event that they are refused. This issue needs consideration in the context of how the roll-out of Secure Schools will fit within the decommissioning of YOIs and STCs. It raises concerns that as Secure Schools are created, children who are refused placements from these establishments will be held in a shrinking number of YOIs and STCs that are legally obligated to place them, with a significant impact on those children.

## The number of children in custody projected to double

Alarm bells are ringing about how an estate already on its knees will be drawn further into deep crisis, should the number of children in custody rapidly increase as projected by the government.

***“It’s using this moment to build that pressure and say, right okay, we’re not going to just let this number creep up and up again, we’re going to use this low number to try and tackle it. But I don’t really have faith in the people running the system or the political environment that they’re running in, that that will happen, depressingly” – Senior civil servant***

The Ministry of Justice and HMPPS expect the number of children in custody to more than double by September 2024.<sup>88</sup> This estimate is based on courts recovering from the pandemic and dealing with backlogged cases, the impact of measures in the Police, Crime, Sentencing and Courts Act 2022, and the planned recruitment of around 23,000 additional police officers.<sup>89</sup>

Custody numbers have fallen over the last decade in line with overall reductions in numbers of children coming into the youth justice system,<sup>90</sup> rather than due to a specific ideological drive in government to remove children from the harms of the secure estate, for example by changing the legal criteria to restrict the use of custody.<sup>91</sup> This leaves the door wide open for a reversal of the overall downward trend if the number of children in contact with the law increases, or if there is a shift in practice around children in conflict with the law, such as an upswing in punitive attitudes.

This is highly concerning. Experiences during and beyond the pandemic – the exacerbation of children’s vulnerabilities, support services under severe strain, and the current challenging policy context – create the risk that the number of children in contact with the law will increase in coming years, particularly considering the police officer uplift.<sup>92</sup>

In the decade to March 2021, the average custodial sentence length for children increased from 11 months to 17 months.<sup>93</sup> Legislation including the Police, Crime, Sentencing and Courts Act 2022 and Offensive Weapons Act 2019 increase the likelihood of mandatory minimum custodial sentences, create longer custodial sentences, and require a greater proportion of children’s sentences to be spent in custody.<sup>94</sup>

The pandemic experiences created additional incentives to rethink the appropriateness of custody for children, yet, the government instead passed legislation that it expects will increase custody for children, as well as increasing racial disparity.<sup>95</sup> While with the right action being taken now, the projected increase in the number of children in custody is not inevitable, the punitive attitudes across government create the risk that it will indeed become a reality.

***“The more young people there are there, the worse it’s run basically and it just gets totally out of hand. Then the children’s needs aren’t being met at all because it’s literally just firefighting.” – Youth custody practitioner***

The secure estate is not in a fit state to cope with an increase in the number of children in its care. The recent inspection report of Werrington YOI exposed an establishment where children's safety and wellbeing was at risk, and these shocking failures are even more distressing considering it is only operating at half capacity.<sup>96</sup> Similarly, a recent report on Cookham Wood YOI highlighted high levels of violence and 'poor' or 'not sufficiently good' ratings despite operating at less than half capacity.<sup>97</sup> It is equally concerning that the government plans to re-open Rainsbrook STC to fulfil an increase in required capacity,<sup>98</sup> when the circumstances in which the STC was closed have not been properly addressed. Given concerns about staff morale,<sup>99</sup> staff retention<sup>100</sup> and the ability of staff to manage post-pandemic regimes, it is particularly worrying to consider the pressures staff will face and the risks this will place on children if the number of children in custody climbs.

If the number of children in custody is to climb, SCHs could provide the most appropriate level of care for an increasing number of children deprived of their liberty, but there is a national shortage of provision, with the pandemic increasing the number of children awaiting placements.<sup>101</sup> This shortage needs to be addressed to prevent more vulnerable children being detained in YOIs and STCs.

### Implications for the profile of children

There are significant safeguarding risks in placing more children into a failing estate, and concerns that

if the number of children in custody increases, these children will be disproportionately from racially minoritised backgrounds, have care experience, and be extremely vulnerable.

This project's previous briefings highlight how the impacts of the pandemic have been disproportionately felt by racially minoritised children,<sup>102</sup> and given racial discrimination and bias in policing, racial disparities in sentencing and remand decisions,<sup>103</sup> and racialised perceptions of risk and other biases contributing to the escalation of children through the justice system,<sup>104</sup> racial disproportionality in custody may increase.

Children with care experience have also been disproportionately impacted by the pandemic and the care system is under significant pressure,<sup>105</sup> particularly in meeting the needs of older children at risk of exploitation and crime.<sup>106</sup> This creates the risk that disproportionality in the number of children in custody with care experience also increases if numbers increase.

Similarly, children with SEND and children with mental health needs have particularly struggled to have these needs met during the pandemic and there is a risk of children reaching crisis points and ending up in contact with the justice system and in custody.<sup>107</sup> If the number of children in custody rises it may be an increasingly vulnerable population of children, with a need for additional services in place to support them.

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## The future of custody for children

### Repairing the harms of the pandemic for children

Whether children have been held in YOIs, STCs, or SCHs, they have been significantly impacted by their experiences of custody during the pandemic.<sup>108</sup> Focus and investment is needed to repair this harm.

*“Prison is brutalising for children but during this period they've had extended cellular confinement essentially. That's at a really key stage of their development. How is that going to be identified? How are they going to be supported in a way to deal with that” – Youth justice lawyer*

The impact of isolation and lockdown on children's mental health and wellbeing is yet to be fully realised.<sup>109</sup> It is crucial that therapeutic services and practice are embedded in custody,<sup>110</sup> and mental health support is available for those who experienced custody during the pandemic and have since been released.

The disruption to education, targeted interventions, and other purposeful activity and the impact this has had on children's development and progression must also be addressed. The YCS should not be seeking to ensure provision is returned only to pre-

pandemic levels, but to understand what enhancements are needed to catch children up on the opportunities they missed during the pandemic and improve standards.

***“Prison is not an experience that is preparing children to live happy, healthy adult lives when they get out of prison. It’s pretty much the opposite, especially during COVID” – Youth justice lawyer***

As children who have been in custody during the pandemic approach release back into the community, or transfer across the children’s estate or into the adult estate, increased support is needed to address their experiences and prepare them for the transition. Following the recent publication of a policy framework<sup>111</sup> for transitions between the children’s and adult estate, close attention should be paid as to how well these transitions are being supported in practice, including taking into consideration the impact of the pandemic on these children.

Work is also required to identify and support children who have been in custody on remand during the pandemic and subsequently released, who have had adverse experiences in custody lockdown but technically may not be entitled to any support.

Without this extra support available for children who remain in custody or have been released, national stakeholders are concerned about children’s increased vulnerabilities failing to be addressed, children struggling to adjust, and this contributing to cycles of reoffending. The voluntary and community sector plays a crucial role in supporting children in both custody and the community and must be properly resourced to meet increases in demand for services as a result of pandemic experiences.

## Keeping children out of custody

The number of children in custody is currently at a historic low. This presents a key opportunity to work hard now to keep children out of custody, stop numbers climbing back up as the government predicts, and minimise the harm children experience in custody.

***“There are numerous examples along the path to custody that a child treads, where if we really got our policy operational brains together, we should be able to sort out so we are able to keep [the YCS] population as low as possible;***

Given what is known about the profile of children in custody, particular attention needs to be paid to ensure appropriate, tailored services and support are available to meet their needs. This is particularly pertinent given that racially minoritised children are likely to report that programmes and interventions in the justice system do not currently meet their needs.<sup>112</sup> Efforts to engage children in support must take into consideration that children’s mistrust of authority may have been exacerbated by experiences of the pandemic, corroborating existing negative experiences, including racism and various forms of discrimination. All children leaving custody should be offered enhanced support, with particular consideration given to how to meet the resettlement needs of children with care experience and children with SEND.<sup>113</sup>

It is critical that in the event of any future public health emergencies and lockdowns, plans are in place to prevent a repeat of the COVID-19 experience for children in custody.<sup>114</sup> Time out of cell, visits, education and access to services must be maintained.

***“I’ve been quite surprised, depressed, frankly, to see how little we are discussing the safeguarding needs of young people who’ve already had their liberty deprived on justice grounds. We know very, very clearly, very painfully, that the kids we’ve locked up very often experienced higher levels of harm, significant harm to use the word deliberately. We know, for example, that some young people in a secure estate are being subjected to treatment, which frankly, if their birth parents did it, we would remove them. And, yet, in all the discourse around safeguarding and the pandemic, there has been microscopic attention paid to those young people.” – Director, Research in Practice***

***therefore, allowing us to do the kind of interesting things, rather than repacking us to the gunnells so we are just getting through the day with the children who we have” – Senior Official***

The UN Convention on the Rights of the Child sets out that the imprisonment of children shall be used only as a measure of last resort and for the shortest appropriate period of time, and the UN Committee on the Rights of the Child has urged the UK government to establish this statutory principle.<sup>115</sup>

However, prior to the pandemic custody was not used only as a last resort for children, or for the shortest possible period of time.<sup>116</sup> While some national stakeholders and practitioners believe courts may have been more hesitant to send children to custody during the pandemic,<sup>117</sup> there is no reason to believe the sending of children to custody will be closer to fulfilling this principle post-pandemic. In fact, measures in the Police, Crime, Sentencing and Courts Act 2022 move us further away from achieving custody as a last resort or for the shortest appropriate time.<sup>118</sup> Provisions in the Act that strengthen the legislative threshold for custodial remand may go some way to reduce the number of children detained unsentenced, however the threshold could be strengthened further.<sup>119</sup>

***“Remand should be seen for what it is which is an extraordinary failure of imagination and provision for children. To lock children up because there’s nowhere else where they can safely be should be intolerable...there needs to be even tighter legal parameters” – Director of Children’s Rights charity and social worker***

A punitive turn towards increasing the use and length of custody for children must be combatted. There is no evidence that harsher custodial sentences contribute towards rehabilitation or promoting positive outcomes for children,<sup>120</sup> and there is no evidence that the threat of harsher custodial sentences deters children from offending.<sup>121</sup> Meanwhile, there is abundant evidence that imprisonment is extremely harmful to children and disrupts their healthy long-term development,<sup>122</sup> and these harms have only worsened due to the pandemic and pressures on the system.

***“We need change in the system in terms of the length of sentence that children are getting because they’re getting up to nineteen years and they seem to be going up now actually... that affects the whole culture and it affects staff ... how can you have a Child First system that sends children to custody for eighteen years?” – Youth custody practitioner***

The projection from the Ministry of Justice and HMPPS that custody numbers will more than double in the next few years is shocking. The Ministry of Justice, working closely with other government departments, should be doing everything in their power, with the utmost urgency, to prevent that expectation becoming a reality. Similarly, the YCS should be working with urgency to ensure children in custody do not end up returning there following their release. As outlined above, this response should carefully consider how the reparation of harms experienced by children in custody during the

pandemic should be central to plans for effective resettlement and transitions. Yet the absence of a clear vision or ambition for children in custody suggests that the government is resigned to the fact that the number of children in the secure state will climb, while children in custody continue to be unsafe.

The surge in the number of children in custody expected by the Ministry of Justice and HMPPS need not become a reality.

***“When is the government going to put in the resources that children and their families need in order to stop children being deprived of their liberty in the first place? Reserving secure environments for children that absolutely cannot safely live within the community and making sure that those are child centred environments.” – Director of Children’s Rights charity and social worker***

Children in custody are some of the most vulnerable in society, and the projected increase should act as a rallying cry for investment in prevention and early intervention to address children’s needs and tackle extra-familial harm, to disrupt current ‘pipelines’ into custody and prevent new ones from developing. Given this project’s research findings around the exacerbation of children’s vulnerabilities due to the pandemic, and the risks this creates, adopting this project’s earlier policy recommendations aimed at preventing a post-pandemic surge in criminalisation would be a hugely important step in keeping children out of custody in the future.<sup>123</sup> The recently announced £60 million three-year ‘Turnaround scheme’ funding for YOTs to carry out early intervention work is welcomed to this end,<sup>124</sup> especially given the increasing pressures YOTs have been and will be facing to support children outside the formal justice system, and meet the needs of increasingly vulnerable children.<sup>125</sup> If YOTs have more capacity to intervene earlier and offer more support to children this should reduce the risk they go on to enter custody.

While the plan for 23,000 extra police creates a risk that more children will end up in the youth justice system and in custody, given the right training and child-centred focus on safeguarding and diversion, and with the right support services available to refer children into, more police does not have to mean more children in the formal youth justice system.<sup>126</sup>

For children in the youth justice system, reductions in the number of children sentenced to custody could be achieved through improving specialist legal practice,<sup>127</sup> ensuring high quality pre-sentence reports and bail applications,<sup>128</sup> and coordinated

work with YOTs, local partners and sentencers to raise awareness of, and access to, a range of community-based alternatives. If court sentencing and remand practice and YOT provision has improved during the pandemic due to the additional need to keep children out of custody, given custodial conditions,<sup>129</sup> this may have longer term impacts on the likelihood that children on the cusp of custodial sentences or remands get sent to custody. Adopting this project's earlier policy recommendations around designing a youth justice system fit for the future and addressing key injustices would go some way to reducing the number of children who end up in custody.<sup>130</sup>

Primary legislation is one of the most powerful tools with the potential to minimise the use of custody. Creation of a clear legislative framework restricting the use of custody for children in all circumstances is necessary to guard against projected rises.<sup>131</sup>

### Reducing disproportionality

***“It’s really important that we focus on the overrepresentation of racially minoritised children in custody, but also acknowledge that we’ve seen outcomes in the pandemic have not necessarily been as good for racially minoritised children and people. ... There’s going to be potentially that compounding element” – Policy professional***

To reduce racial disparity in custody, cumulative discrimination throughout a child’s journey into custody must be addressed. Opportunities to utilise

the Turnaround funding to address racial disparity at the front end of the justice system must be a priority, including engagement with specialist, grassroots organisations, rooted in local communities. It is critical that a key focus in training new police in child-centred policing includes addressing biases and avoidance of racially disproportionate policing powers. Legal practitioners representing children must also be equipped to challenge the racism inherent in our justice and social systems.<sup>132</sup>

***“Giving the legal professionals, defence solicitors, tools to argue against custodial sentences. Making sure that lawyers are aware of the issues around disproportionality and are able to raise them at the early stage, sentencing” – YOT practitioner***

Special attention also needs to be paid to ensuring police understand the needs of and response to children with care experience and children with SEND to ensure they are not disproportionately and unnecessarily criminalised risking escalation into custody.

Distinct and tightened legal restrictions on the use of custody would apply more equitably to all children and minimise the influence of bias, that sees disproportionately negative outcomes for certain children, particularly racially minoritised children and those in local authority care.<sup>133</sup> The impact of the new legal criteria for remand introduced in the Police, Crime, Sentencing and Courts Act 2022 on racial disparity should be carefully monitored, and if effective, considered for custodial sentencing.

## A clear vision for the future of the secure estate

With custody numbers currently at a low but predicted to increase, the estate facing unprecedented pressures, and with important lessons to be learnt from the pandemic, the need for a clear vision and bold action to reform the children’s secure estate has never been greater.

***The urgency to completely re-think the purpose and the ethos of children’s custody has never been more apparent. Consideration of the evidence suggests that this should include a smaller estate, a continuing reduction of the numbers of children sentenced to custody, and a system underpinned by therapeutic services and practice. (Research paper 7)<sup>134</sup>***

The Chief Inspector of Prisons’ warning in 2017 that “tragedy is inevitable”<sup>135</sup> in the children’s secure estate should have been the call to action that led to

prioritisation across government, a clear strategy, and significant reform. Then again, the onset of the pandemic should have been the time for bold action. Yet this has not been the case, progress has been slow, fixes have been short-term, and the secure estate continues to fail children.

A comprehensive, long-term vision for the children’s secure estate is desperately needed and long overdue. The government must publish a national strategy and improvement plan for the children’s secure estate, that sets a clear direction for coordinated action to keep children out of custody, includes a plan to address the harms of experiencing custody during the pandemic, a plan with clear timescales for fulfilling its commitment to close YOIs and STCs, and to drive immediate improvements to ensure children held in these establishments in the meantime have their needs

met and rights upheld. The strategy should be developed with consultation and contribution from stakeholders including the voluntary and community sector, and with the meaningful participation of children with experience of the secure estate.<sup>136</sup>

***“There is a big challenge and equally an opportunity about how the secure estate recovers from COVID and what that actually means for the way that we manage children in custody. There’s massive opportunities, if we think very differently about how children are managed ... Ideally, I personally would like to see a movement away from youth secure estate completely” – Senior Official, YJB***

### **Fulfilling the commitment to close YOIs & STCs**

The 2022 final report of the Independent Review of Children’s Social Care stated that YOIs and STCs are “wholly unsuitable” for children, and should be phased out within the next ten years, replaced by SCHs or Secure Schools.<sup>137</sup> In response to Scotland’s own care review, the Scottish Government is ending the placement of children into YOIs, instead providing care-based alternatives.<sup>138</sup>

The Ministry of Justice should follow the example of Scotland and adopt the independent review’s recommendation, without delay. As set out in the review, although long-term the ambition should be that the number of children deprived of their liberty falls, in the short-to-medium-term the number of SCH places must be increased, ensuring sufficient capacity “to end the use of inappropriate and damaging YOIs and STCs.”<sup>139</sup> Given conditions in YOIs, the crisis in STC provision, and the extremely slow progress on Secure Schools – a model that has yet to be proven effective – increasing SCH capacity should be the government’s key priority for the secure estate. The government should set out clear annual targets for increasing SCH provision and decreasing the use of YOIs and STCs, in order to achieve the decommissioning of YOIs and STCs within a maximum of ten years.

***“Obviously, the big worry with secure schools is that this is another untested model... There’s justifiable anxiety and fear that the failed experiment of Secure Training Centres will be repeated.” - Director of Children’s Rights charity and social worker***

The proposed re-opening of Rainsbrook STC to meet expected capacity needs is a step backwards, and inappropriate when there is no published plan, it is unclear what lessons from past failures have been identified, let alone what plans to rectify these are, and how improved standards of care could be

guaranteed. Similarly with Oakhill STC, currently operating at restricted capacity due to safeguarding concerns, resuming normal operation without a clear strategy for the secure estate raises huge concerns. HMPPS has conducted, but not published, analysis examining the failure of STCs;<sup>140</sup> an independent safeguarding review of Oakhill STC has been carried out but this too has not been published so there is no way of assessing whether the YCS knows what the problems were and has learnt from them;<sup>141</sup> and the YJB has conducted a review of the decant of Rainsbrook, but again this is not due to be published. Similarly, the YCS has reportedly requested a number of learning reviews from local safeguarding boards following safeguarding incidents. At a sector safeguarding event the YCS said some of these reviews had taken place but with one exception, a review relating to Medway STC, none of these have been published. All safeguarding reviews should be treated under the umbrella of Working Together to Safeguard Children guidance, and therefore there would be an expectation they are published in some form,<sup>142</sup> as would be the case if incidents occurred in the community rather than in custody. These various reviews, and any future reviews, must be published to allow scrutiny and understanding, and ensure the YCS or those involved can be held to account for the action taken to rectify concerns. It is critical this information is shared with stakeholders to allow lessons to be learnt from YOIs and STCs for the development of the future estate. Without doing so, it creates a culture of secrecy and incomplete reporting which ceases to serve children well, and means the YCS’s actions cannot be properly scrutinised as public bodies should be.

The Independent Review of Children’s Social Care recommends that with YOIs and STCs decommissioned, youth justice policy should be moved from the Ministry of Justice to the Department for Education. It is clear from the response to the pandemic that HMPPS is not the appropriate body to hold responsibility for children in the secure estate. As outlined in the previous policy briefings from this project that current policymaking impacting children in contact with the law is a fragmented landscape, with children impacted by policy decisions across multiple government briefs, often side-lined and at risk of falling through gaps in different department’s priorities.<sup>143</sup> The Care Review’s recommendation for a new governing and commissioning structure for children in custody and in contact with the law more widely must be explored and carefully considered within the government’s child custody strategy.

### **An improvement plan for the current estate**

Alongside the implementation of a long-term strategy to decommission YOIs and STCs, urgent steps are needed to address the worst failings in the current estate and improve children's experiences in the short term. Recovery from the pandemic across the secure estate is slow. The first stage of a child custody improvement plan needs to address how to, at a bare minimum, reinstitute time out of cell and provision of education and targeted interventions to acceptable levels compared to pre-pandemic provision.<sup>144</sup>

*“I would say that the real challenge is to get out of this COVID malaise and start delivering something that may well impact on children in a positive way, that's the opportunity. COVID was a full stop on everything, you could design what you like now, there's a blank sheet of paper” – Senior Official, HMI Prisons*

However, an improvement plan focussed on returning to pre-pandemic norms is simply not good enough to ensure safety and promote the wellbeing of children in the secure estate. There is a clear need to evaluate the impact of changes during the pandemic, reflect on and learn lessons from the response, and use this as an opportunity to reset cultural norms and rethink regimes and standards.<sup>145</sup> In doing so, there is a critical opportunity to address racial discrimination within the system and improve the experiences and outcomes of racially minoritised children in custody.

More information is needed on children's experiences during the pandemic, for example to understand changes to self-harm and violence, and perceptions of 'family groups' and changes to behavioural management frameworks. In 2020 the YCS commissioned research to better understand lessons from the pandemic, but publication of the report is already more than a year overdue.<sup>146</sup> As well as publishing this research, an updated review should be carried out to shed light on more recent developments.

National stakeholders and practitioners have called for a rethink of education provision, reorientating services and re-evaluating the specialist support that is available, improving emotional and social wellbeing provision, and radically rethinking aspirations for visits and contact with support networks, including by significantly reducing the cost of phone calls, at least in line with costs in the community.<sup>147</sup> There are opportunities to be seized in a system where practice has shifted significantly. With careful planning to ensure it is an addition and in the best interests of children, the increased use

and availability of technology could be harnessed to improve children's experiences.<sup>148</sup>

Underpinning all of this, a change in the attitude towards children in custody is required, moving away from prison service culture towards a Child First focus for institutions, and a national strategy should clearly articulate this vision.

*“Size is a critical component in the ability of an institution to respond to children in a Child First fashion. I'm sure that the relatively strong performance at Parc where, when last inspected there were only 20 children resident, as against the weaker performances of the bigger YOIs...size has some impact” – Associate, prison reform charity*

Experiences of custody during and in the recovery from the pandemic are far from homogenous across different institutions, let alone across different types of establishment. There are clear lessons to be learned from the pandemic response, and which establishments were better able to maintain provision, about how the secure estate should develop, particularly around the size of establishments, governance, and policy formation. A national strategy should set out the government's evaluation of the response across the estate and the lessons learned.

*“I think what's been helpful is that some of the COVID experiences really underscored what evidence from research tells us. It tells us that children fare better in smaller units with a community-based approach where relationships are really important... We should be thinking, as a system, about how we can invest in that way, and do we need large hundreds of bedded YOIs, or should we be thinking about more community-based provision? Whether they're secure schools, whether they're more secure children's homes, whether there's another kind of hybrid alternative” – Senior Official*

As Secure Schools are developed, it is critical they take into consideration the lessons from the pandemic, for example by keeping the establishments small in size. As well as the lessons from the pandemic, a national strategy for custody should also set out lessons from the failure of STCs and YOIs and the learning to be applied to Secure Schools.

*“We still haven't got it right for children in custody about how they're looked after, how they're taken care of, all of that. But is there an opportunity with the new secure school to think about some of the learning from what children have experienced in COVID?” - YOT Manager and AYM representative*

## Conclusion

The pandemic has been extremely harmful for children in custody, exacerbating existing failures in children's care, infringing children's rights, and shining a light on longstanding concerns. It has made reform within and in managing the secure estate critical to ensure children's needs are better met, and made it clearer than ever that custody must only ever be used as a last resort. By shifting practice and cultural norms there is an opportunity to fundamentally rethink standards of care for children in custody, but without evaluation and a clear vision there is a significant risk that pandemic standards become the norm, at the detriment of children.

Differences in children's experiences across different types of provision provide important lessons for the future estate. With STCs in crisis and a Secure School set to open, now is the time to take action. Historically low custody numbers provide a momentous opportunity to think radically about keeping children out of custody, and restructure and unify the estate for the remaining children. The projection that custody numbers are expected to climb significantly in coming months and years must be strongly challenged and resisted. A strong vision, ambition, and prioritisation from the government and YCS is required to make the most of these potential opportunities before they are lost, to end the brutality of custody for children.

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## Recommendations

### Repairing the harms of the pandemic for children

- Ministry of Justice to commit to and prioritise a programme of work to:
  - identify all children that have been in custody, sentenced or on remand, during the pandemic and have since been released.
  - set out what enhanced support it is making available to children that remain in, and have since been released from, the secure estate, to address the additional harm of custody to children during the pandemic, including what additional support it is making available to children with Special Educational Needs and Disabilities.<sup>149</sup>
- YCS to urgently ensure that children's access to services, education, Release on Temporary License and other support and sentence progression opportunities have at a minimum been restored to pre-pandemic levels.
- YCS to support secure establishments to devise plans to ensure in the instance of further COVID-19 lockdowns or other health emergencies, children are not subjected to isolation and regime cut-off.<sup>150</sup>
- Ministry of Justice to take urgent action to address morale amongst staff in the children's secure estate,<sup>151</sup> and set out what actions it is taking to improve staff retention.
- YCS to provide additional support for staff who were employed in the children's secure estate during the pandemic, including investment in training to improve confidence in keep children and staff safe under post-pandemic regimes.<sup>152</sup>

### Keeping children out of custody

#### Intervene early to keep children out of the youth justice system

- Adopt recommendations in this project's first policy briefing<sup>153</sup> in order to reduce pressure on the youth justice system, and the number of children impacted by the adverse experiences of custody set out in this briefing, by working to improve preventative support and ensure maximum diversion.

#### Improve the youth justice system's response to children at risk of entering custody

- Adopt recommendations in this project's second policy briefing<sup>154</sup> in order to address injustices and shortcomings in the youth justice system, to improve the response to children coming into contact with the law, help prevent behaviour from escalating into offences currently leading to custodial sentences, and ensure custody is only ever a last resort.

## **Embed the principle of custody as a last resort and for the shortest period of time**

- Government to introduce new legislative criteria that significantly narrows the circumstances in which a child can be sentenced to custody, by restricting the offences a custodial sentence is available for, and requiring the court to be satisfied that the child is assessed as posing a serious and continuing risk to the public, and there is genuinely no way of managing that risk in the community.<sup>155</sup> As a minimum, the criteria for custodial sentencing should be updated in line with the amendments to the custodial remand criteria introduced in the Police, Crime, Sentencing and Courts Act.<sup>156</sup>

## **A clear vision for the children's secure estate**

### **A national strategy and improvement plan to be urgently developed that sets out a comprehensive, long-term vision for children in custody**

Secretary of State for Justice, as the current role-holder for youth justice, to lead the development of, and publish, a strategy for the children's secure estate, involving relevant government departments and external stakeholders including the voluntary and community sector and those with experience of youth custody, including:

- The steps the government is taking to ensure its prediction that the number of children in custody will more than double in coming years is not borne out – including the recommendations set out above.
- How the Ministry of Justice is working to repair the harms to children of experiencing custody during the pandemic - including the recommendations set out above.
- The government's plan with clear timescales for fulfilling its commitment to close YOIs and STCs, within ten years as recommended by the Independent Review of Children's Social Care, including the steps it is taking to increase SCH capacity, which provide the most appropriate environment for children deprived of their liberty.<sup>157</sup>
- A robust interim improvement plan for YOIs and STCs that sets out how the estate will not only recover pre-pandemic standards and provision, but learn the lessons from COVID-19 and improve the regime and standards, to ensure children held in these establishments until they are decommissioned are safeguarded and their wellbeing is promoted.

### **To inform the children's secure estate strategy, the YCS to:**

- Publish the research commissioned in March 2020 into the impact of COVID-19 on the children's secure estate, which was due to be published in March 2021.
- Commission and publish updated research and evaluation of the impact of the pandemic on the secure estate and children, setting out implications for the future of regimes, management, oversight, and the structure of the estate. This research should include examination of the impact on mental health, the impact of family groups, changes to visits and contact and the role of technology, and children's experiences of release and resettlement.
- Publish the independent safeguarding review of Oakhill STC; review of the decant of children from Rainsbrook STC; the recent HMPPS reviews of STC failures;<sup>158</sup> and learning reviews following safeguarding incidents; so that learning and recommendations for the future can be understood by all stakeholders.
- Ensure children are central to the discussions. Their participation in shaping both central policy and practice in their secure establishments should be meaningful, and supported by HMPPS through investment to enable the development of a framework of meaningful participation.<sup>159</sup>
- Ensure that all policies and plans for children in custody start from a children's perspective, and are not simply adult policies applied to or adapted to children.
- Take into careful consideration the detailed findings and recommendations set out in this project's research briefings regarding the secure establishment case studies, YOI X and SCH A.<sup>160</sup>

***Please note the contents of this briefing do not necessarily reflect the views of all AYJ members***

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## Further information

For more information or if you are interested in arranging a meeting to discuss this briefing, please contact AYJ Policy Manager, Millie Harris: [millie.harris@ayj.org.uk](mailto:millie.harris@ayj.org.uk).

For further information about the project please contact Professor Hannah Smithson: [h.i.smithson@mmu.ac.uk](mailto:h.i.smithson@mmu.ac.uk)

### Policy briefings:

[A perfect storm for children at risk? Preventing a post-pandemic surge in the criminalisation of children](#)

[A critical juncture for youth justice: Learning lessons & future directions for a post-pandemic youth justice system](#)

### Research papers:

[Youth Offending Teams' Adaptations to Practice and Service Delivery: Research Paper](#)

[Children's Welfare Needs and Vulnerabilities: Research Paper](#)

[Partnership Working: Research Paper](#)

[YOTs' Adaptations and Challenges to Service Delivery: A national picture: Research Paper](#)

[Introduction to the Youth Courts: Research Paper](#)

[Court Adaptations: Research Paper](#)

[The Impact on Youth Custody: Research Paper](#)

[The Impact in a Secure Children's Home: Research Paper](#)

### Literature review:

[The Youth Justice System's Response to the COVID-19 Pandemic: Literature Review](#)

[The Youth Justice System's Response to the COVID-19 Pandemic: Executive Summary](#)

### Other project outputs:

A series of blogs that accompany these policy briefings, summaries of the project's events in Parliament and at MMU, and a film co-produced by children, can be found [here](#)

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## Acknowledgements

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### About the Manchester Centre for Youth Studies (MCYS)

The MCYS is an award-winning interdisciplinary research centre at MMU, specialising in participatory, youth-informed research that positively influences the lives of young people. MCYS believes young people should have the opportunity to participate meaningfully in decisions that affect them and employs participatory approaches to engage with young people across a range of issues. As an interdisciplinary research centre, the MCYS team brings together academics and practitioners from a range of disciplines. In addition to collaborating with young people and their communities, MCYS works with agencies and organisations across the public, private and voluntary sectors, both in the UK and internationally.

### About the Alliance for Youth Justice (AYJ)

The AYJ brings together over 70 organisations, advocating for and with children to drive positive change in youth justice in England and Wales. Members range from large national charities and advocacy organisations to numerous smaller grassroots and community organisations. The AYJ advocates for distinct systems, services and support that treat children as children first and foremost - underpinned by social justice, children's rights and a focus on positive long-term outcomes. AYJ aims to promote widespread understanding about the underlying causes of children coming to the attention of the criminal justice system, and champion approaches that enable them to reach their full potential.

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<sup>89</sup> <https://www.nao.org.uk/wp-content/uploads/2022/04/Children-in-custody-secure-training-centres-and-secure-schools.pdf>

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<https://www.crestadvisory.com/post/examining-the-yis-what-drove-the-falls-in-first-time-entrants-and-custody>.

<sup>92</sup> <https://www.ayj.org.uk/news-content/a-perfect-storm-for-children-at-risk-publication>

<sup>93</sup> <https://www.gov.uk/government/statistics/youth-justice-statistics-2020-to-2021>

<sup>94</sup> <https://www.ayj.org.uk/s/AYJ-PCSC-Bill-House-of-Lords-Second-Reading-Briefing.pdf>

<sup>95</sup> <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements/youth-measures-in-the-police-crime-sentencing-courts-bill-equalities-impact-assessment>;  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1073442/MOJ\\_Sentencing\\_IA\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073442/MOJ_Sentencing_IA_2022.pdf)

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<sup>97</sup> <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/06/Cookham-Wood-IRP-web-2022.pdf>

<sup>98</sup> <https://www.nao.org.uk/wp-content/uploads/2022/04/Children-in-custody-secure-training-centres-and-secure-schools.pdf>

<sup>99</sup>[https://www.mmu.ac.uk/media/mmuacuk/content/documents/mcys/COVID-19 and Youth Justice Paper 7.pdf](https://www.mmu.ac.uk/media/mmuacuk/content/documents/mcys/COVID-19%20and%20Youth%20Justice%20Paper%207.pdf)

<sup>100</sup> <https://www.justiceinspectorates.gov.uk/cjii/wp-content/uploads/sites/2/2022/05/CJ-Covid-19-recovery-progress-report-web-2022.pdf>

<sup>101</sup> <https://socialcareinspection.blog.gov.uk/2020/06/09/secure-children-homes-helping-the-most-vulnerable-children/>

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<sup>105</sup> <https://www.ayj.org.uk/news-content/a-perfect-storm-for-children-at-risk-publication>; <https://thecommissiononyounglives.co.uk/wp-content/uploads/2021/12/OUT-OF-HARMS-WAY-CYL-DEC-29-2021-1-4.pdf>

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<sup>111</sup> <https://www.gov.uk/government/publications/transition-of-young-people-from-the-children-and-young-people-secure-estate-to-adult-custody-policy-framework>

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<sup>116</sup> <https://www.ayj.org.uk/news-content/ensuring-custody-is-a-last-resort-for-children>

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<sup>119</sup> <https://www.ayj.org.uk/s/AYJ-PCSC-Bill-House-of-Lords-Second-Reading-Briefing.pdf>

<sup>120</sup> See for example the government's own guidance on desistance: <https://www.gov.uk/guidance/desistance>; and <https://thenayj.org.uk/theres-quos-nothing-smart-about-sentencing-children-harshly-nbsp/>

<sup>121</sup> For exploration of this argument see: <https://www.ayj.org.uk/s/AYJ-PCSC-Bill-House-of-Lords-Second-Reading-Briefing.pdf>

<sup>122</sup> <https://www.ayj.org.uk/news-content/ensuring-custody-is-a-last-resort-for-children>

<sup>123</sup> <https://www.ayj.org.uk/news-content/a-perfect-storm-for-children-at-risk-publication>

<sup>124</sup> <https://www.ayj.org.uk/news-content/ayj-comment-turnaround-scheme-announcement>

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<sup>126</sup> See our first policy briefing for in-depth discussion <https://www.ayj.org.uk/news-content/a-perfect-storm-for-children-at-risk-publication>

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<sup>128</sup> [https://howardleague.org/wp-content/uploads/2018/03/D\\_ADULT\\_Guide.pdf](https://howardleague.org/wp-content/uploads/2018/03/D_ADULT_Guide.pdf);

<sup>129</sup> <https://www.ayj.org.uk/news-content/a-critical-juncture-policy-briefing-pub>

<sup>130</sup> <https://www.ayj.org.uk/news-content/a-critical-juncture-policy-briefing-pub>

<sup>131</sup> For more information see <https://www.ayj.org.uk/news-content/ensuring-custody-is-a-last-resort-for-children>

<sup>132</sup> <https://howardleague.org/wp-content/uploads/2021/09/A-guide-for-antiracist-lawyers-1.pdf>

<sup>133</sup> Read more about a proposed legislative threshold for ensuring custody is a last resort: <https://www.ayj.org.uk/news-content/ensuring-custody-is-a-last-resort-for-children>

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<sup>135</sup> <https://www.bbc.co.uk/news/uk-40644383>

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<sup>137</sup> <https://childrensocialcare.independent-review.uk/final-report/>

<sup>138</sup> <https://www.thenational.scot/news/20033978.scottish-government-ends-placement-under-18s-young-offender-institutions/>

<sup>139</sup> <https://childrensocialcare.independent-review.uk/final-report/>

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<sup>141</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1032921/oakhill-action-plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032921/oakhill-action-plan.pdf)

<sup>142</sup> <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

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