



Who are they? Where are they? 2020

Children locked up

November 2020

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Foreword by Anne Longfield, Children’s Commissioner for England

As Children’s Commissioner for England, my job is to protect the rights of all children, and especially those who are living away from home, in the care of the state. I take particularly seriously my responsibility to focus on a smaller group of those children, potentially the most vulnerable in the country, who are living ‘behind closed doors’, locked up in secure hospitals, prisons or children’s homes.



Locking a child up is one of the most extreme interventions the state can make in a child’s life. Too often I have found that this happens as a result of a series of missed opportunities – opportunities to identify difficulties early on, and provide the right support to children and their families. It sometimes reaches a point where it is decided that the only immediate way available to keep a child safe from harming themselves or others is to deprive them of liberty. When this does happen it is vital that children’s interests come first – that their rights are protected, and that they are in the best possible place to help them stay safe, and get the support to recover and progress

In order to ensure this is the case, it is essential to know, at the very least, how many children are locked away and where they are living. Although I have the powers as Children’s Commissioner to visit secure institutions and gather data on what is happening to these children, I have been shocked at the lack of information available about some of these children. The fact remains that no one in Government knows who all these children are and where they are living.

It is also vital to gather all this information together in one place, to confront the fact that although children may be locked up in different institutions, under different laws, they often have very similar needs. At first glance children in prison have committed crimes, those in mental health wards have mental health needs and children in care have grown up in difficult family circumstances. But in reality, the child who ends up in a secure children’s home may have been drawn into crime; the child in a prison may well have had mental health problems; and the child in a mental health ward may have a difficult home life.

To shine a light on this, last year I published my first annual report on this issue ‘*Who are they? Where are they?*’, and am now updating the findings of that report. This year I have found that the number of children officially counted as locked away appears to have fallen – from 1,465 down to 1,340 – largely driven by falling numbers of children in custody in prisons. This appears to be a positive change. But I still have serious concerns about the care these children are receiving. Custodial institutions are often failing to keep children safe, there is often highly variable quality in mental health wards and many children are staying in hospital for far too long.

This year I have also found more evidence about the growing number of children locked up who do not appear in any official statistics and are not living in places designed to hold children securely. Often these children are incredibly vulnerable, at risk of being sexually or criminally exploited or harming themselves, yet there is no space in a secure children’s home for them to be kept safe. Councils are having to come up with makeshift arrangements like flats or hostels or even caravans. We heard of one child who was

living in a holiday home and had to move out for a weekend as it had already been let out to holidaymakers. Councils themselves know that this is often not nearly good enough, but they say it is the only way they can find to keep children physically safe as they wait for something better.

These children exist in a grey area of the law, with fewer legal safeguards than other children. Some are locked up illegally with no court authorisation in place at all. Indeed, I have recently intervened in a Supreme Court case to share my concerns about the legal position these children are placed in.

While decreasing numbers of children in custody is certainly good news, we cannot celebrate successes in locking fewer children away if the official numbers mask a hidden group of children whose numbers may be rising.

All of us have this year experienced new limitations on our freedom. So many of us found, during the height of lockdown, that the ability to leave the house even just once a day was essential for our well-being. It gave renewed appreciation of just how valuable our right to liberty is, and how we guard any encroachment on that right when it could be avoided.

This report clearly demonstrates the urgent need for a new approach for providing appropriate secure care for children for all those children who do need it, no matter what their needs are. This should start from the principle that no child should be locked up unless it is absolutely necessary. Holding a child in a secure setting should always be part of a plan to provide them with the help they need to thrive, so that any period behind closed doors can be as short as possible and in a therapeutic and child friendly environment.

A handwritten signature in black ink, reading "Anne Longfield". The signature is written in a cursive, flowing style. Below the signature is a short horizontal line.

Anne Longfield OBE
Children's Commissioner for England

Introduction

Last year the Children's Commissioner's Office produced its first annual report on children living in secure accommodation. *'Who are they? Where are they?'* set out, as far as possible given limited available data, how many children in England are 'locked up' in many different kinds of institutions.

The report found a relatively small group of children – 1,465 – living in secure settings on whom the state spent £300million a year. Yet these children, although often having quite similar vulnerabilities and needing similar care provision, were living in settings managed by three different government departments, and commissioned at a local level by different organisations, with no department aware of the whole picture. Children placed in secure settings could end up living in a mental health hospital (managed and commissioned by the NHS), youth custody (managed and commissioned by the Youth Custody Service) or secure children's homes (run by individual Local Authorities).

This year's report updates those figures and addresses some of the gaps in data that we identified in 2019. For March 2020, we identified a total of 1,340 children in the official figures. Of these 715 children were living in Secure Children's Homes, Secure Training Centres and Young Offenders Institutions because they had either been sentenced or remanded there by a court. This is down from 873 children identified in our previous report. There are now 81 children living in Secure Children's Homes for welfare reasons, slightly down from 87 last year. We have found that there are 237 children detained under the Mental Health Act on secure mental health wards and psychiatric intensive care units, and a further 307 detained on non-secure wards, making a total of 544 children. This suggests a slight rise from the 505 children included in last year's report, but because of the poor quality of NHS data it is impossible to make a direct comparison across the years.

We also explore further what we know about groups of 'invisible children' who do not appear in statistics about children deprived of liberty. This year we carried out visits to mental health wards to interview children who had been admitted 'informally', that is on the basis of either their or their parents' consent, rather than being sectioned under the Mental Health Act. While for some children this was an important way for them to show control over their own life and treatment, for others there were serious questions about whether this consent was genuinely freely given.

We also provide an update on the numbers of children who have been deprived of their liberty through the 'inherent jurisdiction' of the high court. This is used when no existing piece of legislation allows for a child to be deprived of liberty, but it is judged necessary to keep them safe. As our review of court cases shows, it is often used when a child needs a place in a secure children's home but there is none available. The numbers of children in this position appear to be rising, with 327 children included on applications to the high court in 2019/20 compared to 215 last year and 103 the year before.

We have also conducted a series of visits to residential special schools and children's homes to learn more about children who are living in these settings with extensive restrictions on their freedom. As this report shows, even when they are getting appropriate care and support, these children often do not have the right legal protections in place.



90
Children in secure children's homes for youth justice reasons

114
Children in secure training centres

511
Children in young offenders institutions

81
Children in secure children's homes, for welfare reasons

237
Children in secure mental health wards, under the mental health act

307
Children in non-secure wards, under the mental health act

Youth custody

Children who have been accused of committing crimes can be remanded or sentenced to three types of secure accommodation – Secure Children’s Homes, Secure Training Centres, and Young Offenders’ Institutions. Secure Children’s Homes are the smallest type of custodial setting (the homes which take children on a youth justice basis have an average of 22 places) and as well as children sentenced or remanded there, they can also house children placed there for their own welfare by Local Authorities (these children are discussed in the next chapter). Although there are 13 secure children’s homes in England, only seven take children who have been placed there by the Youth Custody Service.

Secure Training Centres can house children aged between 12 and 17; there are currently only two in operation as the third was closed in order to be redeveloped in to a Secure School, a new type of custodial institution which is intended to be more therapeutic and education centred.

Young Offenders’ Institutions are for boys aged 15 to 21, although boys under 18 must be housed on separate sites, or on separate parts of a shared site, from those aged over 18. In England, only Feltham has under and over 18s on the same site, although under 18s live in a separate section and do not share accommodation with over 18s.

Number of children detained

Figure 1: Number of Children in Youth Custody settings, March 2020¹



Note: This chart only includes under 18s in these settings², and only those in England

The number of children in Youth Custody continues to fall and has been falling since 2009 – although at a much slower rate in the last few years. There has been a further reduction in recent months, with the latest available monthly statistics showing there were a total of **571** children in all youth justice settings

¹ The number of children in Secure Children’s Homes includes children placed by the Youth Custody Service as well as the children on remand placed by the Local Authority (9 children in 2019 and 15 in 2020). Both figures are from the annual Department for Education statistics rather than Youth Custody Data and the figure for children remanded to local authority accommodation is from February 2020 rather than March, as the DfE published the figures for prior to the Coronavirus lockdown

² Figures for children under 18 in England by type of settings have been provided by the Youth Custody Service

in England and Wales at the end of August 2020.³ It is however likely that this dramatic fall in numbers is at least in part because of fewer children going through the courts during the pandemic.

Secure Children's Homes accommodate a slightly smaller proportion of the children in youth custody than they did five years ago – 10% compared to 11% - and the number of children placed in them on average on a monthly basis has fallen by 32% between 2014 and 2019 compared to a 24% fall in children placed in YOIs⁴. These homes tend to be judged as better quality and are designed to be more supportive than STCs or YOIs. They are also the most expensive, with an estimated cost per child of £210,000 per year, with Secure Training Centres at £160,000 a year and YOIs at £76,000.⁵ It is concerning that the provision for children which is most likely to be judged good or better is not being prioritised when it comes to accommodating children who have committed offences, as children's safety should be given higher priority than making cost savings.

Legal basis for detention

Over the past five years, the number of children on Detention and Training Orders (the shortest form of sentence – see definitions below) has almost halved⁶. In fact, the steady decline in children being sentenced to a DTO is the most significant driver of the fall in the youth custody population. This indicates that children who have committed more minor offences are likely to have been diverted into alternative forms of sentencing, which is a positive development. It does, however, mean that a higher proportion of children among the current cohort in youth custody will have committed the most serious offences.

As the table below shows, the number of children in custody under Section 91 (for serious sexual and violent offences) also fell compared to last year, although since 2016 this figure has remained much more stable than the number of children in custody on a DTO⁷. The number of children in custody for murder, or the most serious crimes which warrant an extended sentence, remains similar to last year.

Children on remand are those who have not yet received a sentence, but who are awaiting trial or a sentencing hearing. The number of children in custody on remand remains stubbornly high, with an increase on last year. More than a third of children in custody are there on remand, which is especially concerning given the fact that last year 66% of children remanded into custody were not eventually given a custodial sentence⁸. This is despite the Legal Aid, Sentencing And Punishment Of Offenders Act 2012 which was intended to decrease the number of children going into custody on remand, and increase the use of Local Authority accommodation. It is promising that the Government's recently published sentencing White Paper promises to raise the bar on custodial remands, but this will require ensuring adequate placements to supervise children in the community.

³ As this figure does not include those on remand placed by Local Authorities, and does include those in Wales, it is directly comparable to **737** children placed by the YCS in March 2020

⁴ Youth Justice Statistics, Chapter 5, table 7.3

⁵ Dr Phillip Lee, Youth Custody: Costs: Written question - 144303

⁶ Youth Justice Statistics, 2019/20, Table 7.4

⁷ Youth Custody report, September 2020

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf

Table 2: Numbers in Youth Custody settings by legal basis for detention

	March 2019		March 2020	
Detention and Training Order	330	36%	272	33%
Remands	253	28%	272	33%
Section 91	276	30%	210	26%
Other	61	7%	61	7%
Total	920		815	

Note: this table also includes over 18s as the data for just under 18s is not yet available for 2020. It also includes children placed in Welsh settings

Definitions

Remand is used to place a child in custody before their trial

Detention and Training Orders are sentences given to children aged 12 to 17, and last between 4 months to 2 years – they are for serious crimes for which an adult would be sent to prison

Section 91 of the Powers of Criminal Courts (Sentencing) Act can be used when children have committed more serious offences, for which adults would be sentenced to 14 years or more, to sentence them for longer than two years

'Other' sentences will cover:

Section 90 of the Powers of Criminal Courts (Sentencing) Act, which can place children in custody on a life sentence for murder.

The Criminal Justice Act, which can be used to give extended sentences for certain specific violent and sexual crimes, and for children who are deemed to be particularly dangerous.

A civil injunction, which is used when someone has, on the balance of probabilities, displayed anti-social disorder that is likely to cause harassment, alarm or distress. Courts can require or prohibit certain actions – such as attending a course, or staying away from an area – and if those requirements are repeatedly broken, a child can be sent to custody.

Number of settings and quality of provision

While the reduction in the number of children in custody is welcome, the conditions in youth justice settings give cause for serious concern. The table below shows that no Young Offenders Institution is judged as Good across the board. This situation is getting worse. Since our report in June 2019 two institutions are judged to have deteriorated, while two have stayed the same. Only Wetherby Keppel Unit has shown some improvement.

The four available ratings are: Good, Reasonably Good, Not Sufficiently Good, and Poor

Table 3: Inspection results for Young Offenders Institutions

	Date of Inspection	Safety	Care	Purposeful Activity	Resettlement	Operational Capacity
Cookham Wood	December 2018	Not Sufficiently Good	Reasonably Good	Not Sufficiently Good	Not Sufficiently Good	188
	September 2019	Not Sufficiently Good	Not Sufficiently Good	Not Sufficiently Good	Not Sufficiently Good	
Feltham A	January 2018	Reasonably Good	Reasonably Good	Not Sufficiently Good	Reasonably Good	180 (and 370 young adults)
	July 2019	Poor	Poor	Poor	Not Sufficiently Good	
Werrington	February 2019	Not Sufficiently Good	Reasonably Good	Reasonably Good	Good	128
	January 2020	Not Sufficiently Good	Good	Reasonably Good	Reasonably Good	
Wetherby	March 2018	Not Sufficiently Good	Reasonably Good	Reasonably Good	Good	288
	March 2019	Reasonably Good	Reasonably Good	Reasonably Good	Good	
Wetherby – Keppel Unit	March 2018	Good	Good	Reasonably Good	Good	48
	March 2019	Good	Good	Reasonably Good	Good	

Similarly, both remaining Secure Training Centres are judged by inspectors as requiring improvement. For these settings the four available ratings are: Outstanding, Good, Requires Improvement, and Inadequate. Since last year’s report one Secure Training Centre – Medway – has been closed. The first Secure School (a new form of youth custody provision) is planned to open on the site.

Table 4: Inspection results for Secure Training Centres

	2018/19	2019/20	Capacity
Oakhill	Requires Improvement	Requires Improvement	80
Rainsbrook	Requires Improvement	Requires Improvement	87

There are two Secure Children’s Homes which only take children on a youth justice basis, and a further five which take some children on a youth justice basis and some on a welfare basis. These homes are inspected by Ofsted and can be rated Outstanding, Good, Requires Improvement or Inadequate. Compared to both YOIs and STCs, SCHs overall are more likely to be highly rated.

Table 5: Inspection results for Secure Children’s Homes

	Latest Ofsted Rating	Number of places for children accommodated on youth justice basis
Aycliffe	Outstanding	8
Barton Moss	Outstanding	27
Aldine House	Good	5
Lincolnshire	Good	11
Adel Beck	Good	14
Clayfields House	Requires Improvement to be Good	12
Vinney Green	Requires Improvement to be Good	24

Restraint and segregation

Regulations set out that restraint against children in custody should only be used when necessary, and guidance states that it should be seen as the last available option⁹. It is very concerning that current data indicates high levels of restraint in these settings¹⁰. 'Use of Force' statistics show that in 2019/20 there were 7,249 incidents where force was used against children in custody, with a total of 18,061 types of force being used (in each single incident more than one kind of force might be used). In 16% of cases the child was restrained in a prone position – lying on their front – which is recognised as being particularly dangerous as it can restrict a child's breathing¹¹. There were 55 incidents which left children requiring medical attention, and a further 233 incidents where 'warning signs' of potential injury were noticed – this can include when a child says that they can't breathe, or if they lose consciousness.

In the latest available data, from March 2019, 355 children, over a third (35%) of the children in STCs and YOIs during that month, were subject to use of force, in 679 incidents¹².

In addition, over the course of 2018/19 there were 656¹³ Restrictive Physical Interventions in SCHs, or just under 55 a month. An average of 28 children per month (27%) were subject to these interventions. This only covers children placed in Secure Children's Homes on a youth justice basis, not on a welfare basis. In 2019 there were 9 children in Secure Children's Homes who received injuries requiring medical attention as a result.

In all settings where children are deprived of liberty, there are certain rules which set out when children can be restrained. In Secure Children's Homes and Secure Training Centres it may only be used to prevent injury, serious damage to property or to stop a child from running away, while in YOIs it may also be used to 'maintain good order'. The use of restraint to maintain good order, rather than to prevent harm, is particularly concerning, and the UN Committee on the Rights of the Child has rightly criticised its use in the UK¹⁴. In 2018/19 (the most recent data available) force was used in 254 incidents for 'passive non-compliance' – namely to maintain good order rather than prevent harm¹⁵.

YOIs and STCs also allow restraint which deliberately inflicts pain on a child, although the Government – in response to Charlie Taylor's review on restraint - has recently committed to removing training on pain-inducing restraint and limiting the circumstances when it can be used¹⁶. Intentionally causing pain to a child, even if done to keep them safe, should never be allowed. In 2018/19 restraint intended to inflict pain - such as bending back a thumb or a wrist or pushing on a nerve centre on the jaw bone - was used 251 times¹⁷.

When restraint is truly the only option available to stop a child from harming themselves or others it may be necessary, but the high level of restraint being used against children in these settings is very

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/456672/minimising-managing-physical-restraint.pdf

¹⁰ There are currently two different sets of statistics on restraint in the youth custody estate. There are figures available on 'Restrictive Physical Interventions' (covering only where force is used to overpower a child) in SCHs, STCs and YOIs, and also figures on 'Use of Force' covering a wider range of incidents where force is used. However, the Use of Force statistics only cover YOIs and STCs, not SCHs. In this note we consider Use of Force statistics for STCs and YOIs and RPU statistics for SCHs

¹¹ Youth Justice Statistics, Table 8.24

¹² Youth Justice Statistics, Table 8.23

¹³ Youth Justice statistics, Table 8.4, based on multiplying the average incidents per month by 12

¹⁴ Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 2016

¹⁵ Youth Justice Statistics, Table 8.24.

¹⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893194/pain-inducing-techniques-government-response.pdf

¹⁷ Youth Justice Statistics, Table 8.28

concerning, not least as it suggests other more positive ways of managing behaviour have failed¹⁸. While we acknowledge that sometimes the behaviour shown by these children is very challenging, restraint causes great distress to a child and runs the risk of injury, as well as undermining their relationship with staff¹⁹.

To manage serious incidents or as a form of discipline, children will also sometimes be removed from other children and placed somewhere alone – this might be in their own room or an empty classroom, but can also be in a segregation unit specifically for that purpose²⁰. This is called ‘single separation’ in youth justice statistics. The latest data shows that on average in 2018/19, 91 children (31%) a month were subject to single separation in SCHs and STCs, over the course of 260 incidents²¹. The use of single separation is only reported in SCHs and STCs. There is no data published on separation or segregation in YOIs. In a report published in 2018 we found that 314 children in YOIs were subject to separation over a six-month period, and recommended that data on YOIs be reported annually. However, this is still not happening²². A recent report found that children separated in YOIs were spending over 22 hours a day locked in their cells, in one case *‘lying on a mattress on the floor of a filthy cell’*. Some children only had 15 minutes out of their cell a day on weekends, in conditions amounting to solitary confinement. The report found examples of children being separated for nearly three months. Although there are clear rules about reviewing separation after three days, these were not being effectively used. The report also found that separation was used not just to keep children safe, but as a punishment for poor behaviour²³.

Length of stay

While our research aims to identify the total numbers of children in secure settings at any one time, it is also important to understand how long these children spend in such accommodation. The median length of stay for children in youth custody is 91 days, or roughly three months, four days longer than last year’s average, and the longest since this information has been recorded²⁴. This reflects the fact that a higher proportion of children in custody who have been sentenced are now there on longer sentences, because they have committed more serious crimes – the average sentence length has risen from 11.4 months to 17.7 months over the last ten years – with decreased use of custody for those who have committed less serious offences²⁵.

While children staying on remand are usually there for much shorter periods, their length of stay is also increasing - while most ‘Remand only’ episodes continued to end within three months, this proportion has decreased from 86% in the previous year to 81% in the latest year²⁶. The latest statistics show four children have been held on remand for over nine months.

¹⁸<https://www.justiceinspectors.gov.uk/hmiprisonson/wp-content/uploads/sites/4/2018/03/Incentivising-and-promoting-good-behaviour-Web-2018.pdf>

¹⁹ <https://publications.parliament.uk/pa/jt201719/jtselect/jtights/994/994.pdf>

²⁰ For more information on the practice of segregation see <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2018/10/Segregation-report-final.pdf>

²¹ Youth Justice Statistics, Table 8.1

²² <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2018/10/Segregation-report-final.pdf>

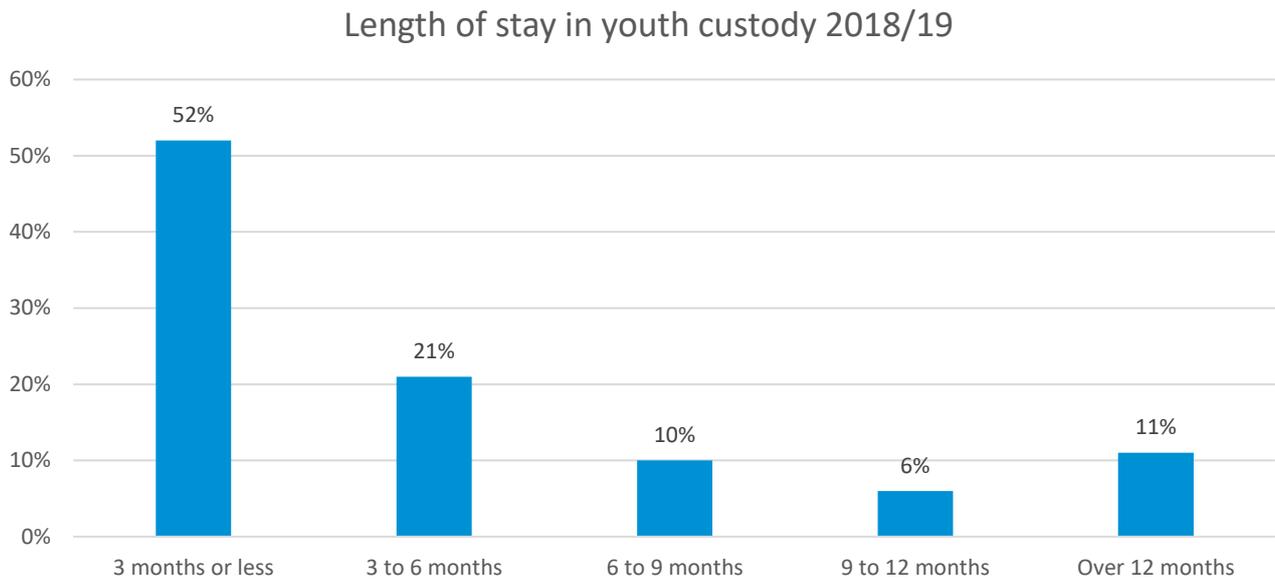
²³ <https://www.justiceinspectors.gov.uk/hmiprisonson/wp-content/uploads/sites/4/2020/01/Separation-of-children-thematic-Web-2019.pdf>

²⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf

²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf

²⁶ *ibid*

Figure 1: Children's Length of Stay in Youth Custody



Distance from home

35% of children in custody were placed more than 50 miles from home²⁷, largely a result of there being only 13 youth custodial institutions in England and two in Wales. Being placed this far away from home reduces the number of visits that children receive not only from their friends and family, but also from external professionals such as social workers²⁸. It can also make planning for resettlement more challenging, as caseworkers have to arrange appropriate accommodation in areas which they are unfamiliar with across the country²⁹. This is a strong argument for smaller homes that are closer to children's own communities.

²⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf

²⁸<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2016/09/The-impact-of-distance-from-home-on-children-in-custody-Web-2016.pdf>

²⁹<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2016/09/The-impact-of-distance-from-home-on-children-in-custody-Web-2016.pdf>

Welfare

As well as the children placed in Secure Children’s Homes on youth justice grounds, children can also be placed there for their own welfare. Under Section 25 of the Children Act a Local Authority can apply to court to place a looked after child in a Secure Children’s Home if they have a history of running away from other placements, and if they are likely to suffer significant harm if they do run away, or if they are likely to injure themselves or others if they are kept in any other kind of accommodation³⁰. For example, Local Authorities might use this kind of accommodation if they think a child is at risk of being criminally or sexually exploited, or at risk of serious violence from gangs.

Number of children deprived of liberty

Table 6: Children in Secure Children’s Homes on Welfare Grounds

	March 2019	March 2020
Children in Secure Children’s Homes on welfare grounds	87	81

The number of children placed in Secure Children’s Homes on welfare grounds has remained quite stable for the last ten years. However, as our research later in this report shows, there is strong evidence that this does not reflect the true demand for these services.

Number and quality of settings

There are currently 13 Secure Children’s Homes in England³¹, a decline since last year as Beechfield SCH in West Sussex officially closed in 2019³². Six of these homes only take children placed on a welfare basis, while five take both those placed on a welfare and youth justice basis. Two only take children placed on a youth justice basis.

³⁰ Section 25, Children Act 1989

³¹ There is also one in Wales - Hillside

³² This did not lead to a decline in available beds, however, as it had not been accepting children since an inadequate Ofsted rating in 2016

Table 7: Ofsted rating and capacity of Secure Children's Homes

	Latest Rating	Number of Available Places for Children Accommodated on a Welfare Basis
Aycliffe	Outstanding	30
Marydale Lodge	Good	12
Atkinson	Good	6
Lansdowne	Good	5
Kyloe House	Good	13
Aldine House	Good	5
Lincolnshire	Good	1
Adel Beck	Good	10
Swanwick Lodge	Requires Improvement to be Good	6
Clare Lodge	Requires Improvement to be Good	12
Clayfields House	Requires Improvement to be Good	8
Total Available Places		108

Although according to their latest Ofsted reports there are a total of 133 'welfare' places in these homes, the Department for Education data shows that only 108 of these are available – this might be because some rooms are being refurbished, or they do not have enough money or staff to operate at full capacity.

There is very limited information published by the Department for Education about children placed solely on welfare grounds. No data is published on the use of restraint and seclusion, nor on how far away these children are from home. They do publish information on length of stay, but this covers both children on 'welfare' placements and those on 'justice' placements, so it is not possible to determine the length of stay for children placed on a welfare basis. However, for all children accommodated at 29th February 2020:

- > 40 children had been accommodated for less than 1 month (22%)
- > 65 had been accommodated for 1 month but less than 3 months (35%)
- > 47 had been accommodated for 3 months but less than 6 months (26%)
- > 21 had been accommodated for 6 months but less than 1 year (11%)
- > 11 had been accommodated for a year or more (6%)³³

This information is vital for monitoring the safety of children, and the appropriateness of where they are living, so it is very concerning that it is not published.

³³ Children accommodated in secure children's homes, February 2020

Mental Health³⁴

Children with mental health problems who have become particularly unwell, and where it is judged that they can no longer be treated and supported safely at home, can be admitted to inpatient mental health wards. In 2019/20 there were 4,127 admissions to inpatient CAMHS³⁵ wards over the course of the year, although 545 of these were re-admissions – meaning a total of 3,582 children were admitted in the year. 1,771 of these admissions were under the Mental Health Act.

In recent years, there has been more attention paid to the wide variation in quality in children’s mental health, particularly in inpatient wards, with scandals emerging about how children have been treated. NHS England has established a taskforce to improve the quality of inpatient mental health care for children, and the Children’s Commissioner chairs an Oversight Board which holds this taskforce to account.³⁶ This work is also looking at ensuring that children are not admitted to hospital unnecessarily or kept in hospital when they could be better looked after at home.

When children do go into hospital, they can be admitted either ‘informally’ – where they or their parents agree to their admission – or under the Mental Health Act. The Mental Health Act is used to ‘section’ people (so called because certain sections of the act are used to detain people) when professionals judge that they need to be in hospital because they are at risk of harming themselves or others. Secure wards and PICUs should only accept children detained under the Mental Health Act, however children can also be detained under the Mental Health Act in wards that are not designated as secure wards.

There are two designated types of secure mental health wards:

- > **Medium Secure Units** for those who pose the highest risk to themselves and others, and who may have committed serious crimes
- > **Low Secure Units** for those who pose a lower, but still significant, risk to their own or others’ safety

In addition, there are also **Psychiatric Intensive Care Units** which are wards with additional levels of security. They should be used for no more than 8 weeks at a time for those experiencing short term behavioural disturbance or for those being assessed before moving to a long-term unit or returning home. Children on these wards should also be detained under the Mental Health Act.

Most children not placed in secure wards will be in general adolescent wards, but there are also specialist wards for children with eating disorders, learning disabilities and autism, and deaf children.

³⁴ For more information on children in mental health wards, see our accompanying technical report on the data, and report on the experiences of children in mental health wards

³⁵ Some services still refer to CAMHS (Children and Adolescent Mental Health Services) and some refer to CYMPHS (Children and Young People’s Mental Health Services).

³⁶ <https://www.england.nhs.uk/mental-health/cyp/children-and-adolescent-mental-health-service-inpatient-services/>

Number of children detained

According to data provided to the Children’s Commissioner’s Office from NHS England, on 31st March 2020 there were **944** children living in inpatient children’s Mental Health Wards. This information is not publicly available, so it is the first time we are able to see how many children are living on each kind of mental health ward.

544 of those children were formally detained³⁷. The rest were there on either an informal basis (**296**), or the legal basis for their admission was not recorded (**104**)³⁸.

Of those children who were formally detained, **307** children were detained on non-secure wards and **237** on a secure ward – either a PICU, low, or medium secure ward.

This figure is significantly different to the number provided in the Mental Health Services Monthly Statistics which show that on 31st March 2020, 469 children were subject to the Mental Health Act³⁹, with 414 of these detained in mental health services. Over a fifth of the children recorded as being detained under the Mental Health Act in the dataset we received are therefore missing from the official, published data. This is concerning, as the monthly statistics are the only regularly published information – and are therefore relied upon to understand if the number of children subject to detention is rising or falling. In addition, while it is positive that the NHS has provided us with fuller information, 11% of the children in that dataset did not have the legal basis for their stay recorded.

Therefore, although the published statistics show numbers of children detained under the Mental Health act have declined from 505 in March 2018, to 467 in March 2019 and 414 in March 2020 it is not clear that this will in fact reflect a true decline.

Table 8 – Number of children in CAMHS units by ward type and detention basis (numbers under five have been suppressed) 31st March 2020

Ward Type	Number of Children in Ward	Number of Children in Ward detained under the Mental Health Act
General Adolescent including Eating Disorder	687	293
Low Secure	106	106
PICU	95	95
Medium Secure	36	36
Learning Disability	16	11
Autistic Spectrum Disorder	*	*
Deaf Children	*	*
Total	944	544

³⁷ In the initial data return 21 children were recorded as having informal or unknown status when they were in secure wards, when they should all be formally detained. We queried the data and were informed this was a recording error, which raises concerning questions about the quality of data. One child was initially recorded as being detained under another act, but again this was confirmed as an error.

³⁸ For some children this data was ‘Not known’ and for others it was described as ‘Not applicable’, although it is not clear why it would not be applicable

³⁹ This number will include children who were subject to the act but not living in inpatient wards

Children on Adult Wards

In addition to the children included in this data, we also know that between 1st January 2020 and 31st March 2020 there were 205 children admitted to adult mental health wards. This is markedly higher than for the same period in 2019, when 74 children were admitted to adult mental health wards, although NHS England have reported significant concerns about the quality of this data. The Mental Health Act 2007 is clear that no child should be placed in an adult ward, except in an emergency or in 'atypical' circumstances – this might include when a child is very close to their 18th birthday⁴⁰. We do not have information on the reasons for admission to adult wards, but this number may indicate a lack of capacity in children's wards. There is no data available from NHS England about the number of children who are in need of a bed but not placed, so there is no other way to judge whether current capacity on children's wards is sufficient.

As comparable information on children admitted to adult wards is not available, the analysis throughout this report and in the accompanying technical report is therefore only based on the more detailed information provided to us by NHS England on children in child and adolescent mental health wards.

Legal basis for detention

There are many different sections of the Mental Health Act which can be used to detain children in hospital. The table below sets out how many children were subject to each of those sections and how many were admitted informally.

⁴⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF

Table 9 – Number of children in CAMHS units by legal basis (numbers under five have been suppressed).

Type of Section		Number of children	Percentage
Section 3	Allows for a child to be detained for up to 6 months for treatment, and can then be renewed	372 ⁴¹	39%
Informal	Where a child is admitted on the basis of their or a parent/carer's consent	296	31%
Section 2	Allows for a child to be detained for up to 28 days for assessment	142	15%
Section 5	Allows for a doctor or nurse to keep an informal patient in hospital while they await a decision to apply for a detention section	13	1%
Section 37, 47 and 48	'Forensic' sections which allows for children sentenced or remanded in court to be placed or transferred to hospital	13	1%
Section 136	Allows for police to take a child to a 'place of safety'	*	
Subject to guardianship under Mental Health Act Section 37	Allows for a Court to give a child over 16 a Guardian, who can direct where they live	*	
Not recorded/unknown		104	12%
Total		944	

⁴¹ This number includes 21 children whose status we have confirmed was recorded in error.

Diagnosis

The table below provides information about the diagnosis that each child has received, although this information is missing for 38% of children.

Table 10 – Number of children in CAMHS units by diagnosis type

High level diagnosis type	Children on mental health wards at 31st March 2020
Eating disorders	20% (190)
Schizophrenia, schizotypal and delusional disorders	4% (38)
Mood [affective] disorders	8% (80)
Neurotic, stress-related and somatoform disorders	10% (94)
Disorders of adult personality and behaviour	3% (27)
Disorders of psychological development	4% (42)
Behavioural and emotional disorders with onset usually occurring in childhood and adolescence	8% (79)
Missing	38% (361)
Other	4% (33)

Number and quality of settings

According to the latest data provided by NHS England, there are 115 inpatient wards in England which were open in October 2020, with a total of 1,368 beds.

Table 11 – Number of CAMHS wards, October 2020

Ward Type	Number of Wards	Number of Beds
Eating Disorders	17	248
General Adolescent	58	727
General Adolescent - Learning Disability	4	32
Low Secure	9	104
Low Secure - Learning Disability	1	7
Medium Secure	4	44
Medium Secure - Learning Disability	2	17
PICU	12	124
Children's Wards (for under 13s)	7	59
Deaf Children	1	6
Total	115	1368

There are therefore a total of 28 secure wards and PICUs, with 296 beds available. This is down from 355 beds when we reported on March 2019 figures, as several hospitals or wards have closed. Two new wards have opened – Austen House, a 14 bed Low Secure ward and a 10 bed PICU in Cygnet Hospital Sheffield; Cygnet also advertises another two wards as now being open on another site.

Host Region	Provider Name	Unit Name	Ward Name	Commissioned Bed Type (Service Category)	Beds - March 2019	Beds - October 2020	CQC Rating (overall rating of child and adolescent mental health wards)
Midlands	Nottinghamshire Healthcare NHS Trust	Hopewood	Hercules	CAMHS PICU	8	8	Outstanding
North East & Yorkshire	Northumberland, Tyne & Wear NHS FT	Ferndene	Stephenson	CAMHS Low Secure LD	8	7	Outstanding
North East & Yorkshire	Northumberland, Tyne & Wear NHS FT	St Nicholas Hospital - Bamburgh Clinic	Alnwood / Ashby	CAMHS Medium Secure	7	7	Outstanding
North East & Yorkshire	Northumberland, Tyne & Wear NHS FT	St Nicholas Hospital - Bamburgh Clinic	Lenox	CAMHS Medium Secure LD	7	7	Outstanding
North East & Yorkshire	Northumberland, Tyne & Wear NHS FT	Ferndene	Redburn PICU	CAMHS PICU	4	4	Outstanding
East of England	Essex Partnership University NHS FT	The St Aubyn Centre	Larkwood	CAMHS PICU	9	10	Outstanding
London	East London NHS FT	Newham Centre For Mental Health - Coborn Centre		CAMHS PICU	16	16	Outstanding
South East	The Huntercombe Group	The Huntercombe Hospital - Maidenhead		CAMHS PICU	29	14	Good
Midlands	The Huntercombe Group	The Huntercombe Hospital - Stafford	Hartley	CAMHS PICU	12	12	Good
South East	Southern Health NHS FT	Bluebird House		CAMHS Medium Secure	13	15	Good
South East	Southern Health NHS FT	Austen House		CAMHS Low Secure	0	14	Good

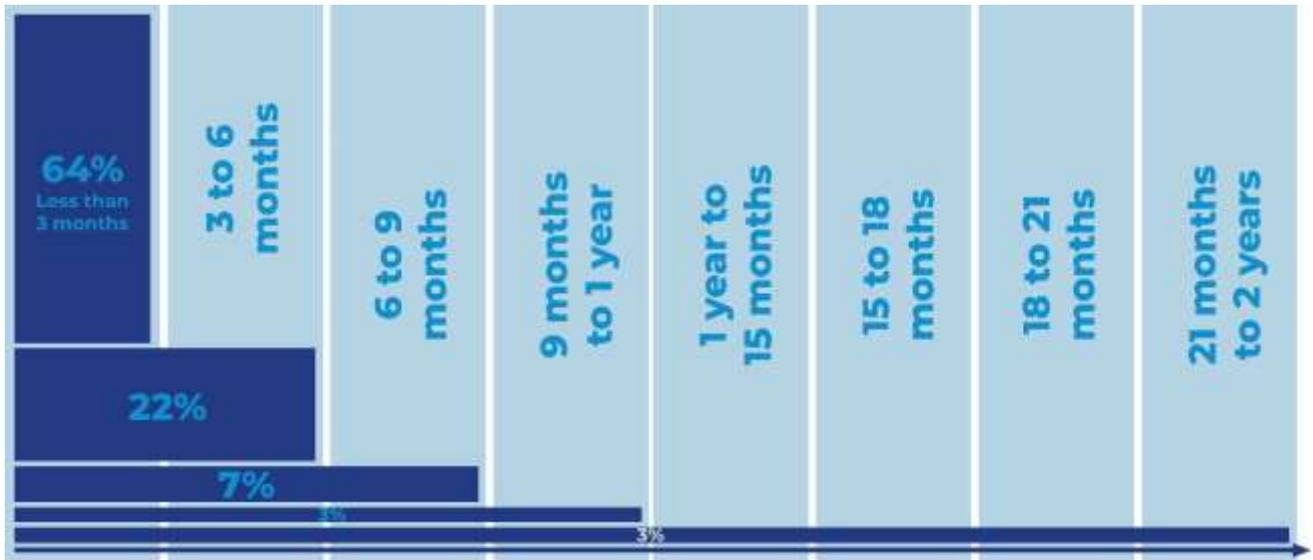
Host Region	Provider Name	Unit Name	Ward Name	Commissioned Bed Type (Service Category)	Beds - March 2019	Beds - October 2020	CQC Rating (overall rating of child and adolescent mental health wards)
London	South London & Maudsley NHS FT	Bethlem Royal Hospital	Dennis Hill PICU	CAMHS PICU	8	8	Good
North West	Priory Group Limited	The Priory Hospital Cheadle Royal	Woodlands	CAMHS Low Secure	10	10	Good
North West	Priory Group Limited	The Priory Hospital Cheadle Royal	Meadows	CAMHS PICU	16	10	Good
London	Partnerships In Care Ltd	Kent House Hospital		CAMHS Low Secure	17	16	Good
North West	Greater Manchester MH NHS FT	Gardner Adolescent Unit		CAMHS Medium Secure	10	10	Good
East of England	Elysium Healthcare	Potters Bar		CAMHS Low Secure	19	19	Good
North West	Cygnets Health Care Limited	Cygnets Hospital Bury	Mulberry	CAMHS PICU	12	12	Good
North West	Cygnets Health Care Limited	Cygnets Hospital Bury	Primrose	CAMHS PICU	12	12	Good
North West	Cygnets Health Care Limited	Cygnets Hospital Bury	Buttercup	CAMHS Low Secure	8	8	Good
Midlands	Birmingham & Solihull MH NHS FT	Ardenleigh	Atlantic & Pacific	CAMHS Medium Secure	12	12	Good
Midlands	Birmingham & Solihull MH NHS FT	Ardenleigh	Adriatic	CAMHS Low Secure	5	6	Good
North East & Yorkshire	Cygnets Health Care Limited	Cygnets Hospital Sheffield	Griffin	CAMHS Low Secure	12	11	Requires Improvement

Host Region	Provider Name	Unit Name	Ward Name	Commissioned Bed Type (Service Category)	Beds - March 2019	Beds - October 2020	CQC Rating (overall rating of child and adolescent mental health wards)
North East & Yorkshire	Cygnets Health Care Limited	Cygnets Hospital Sheffield	Haven (Unicorn)	CAMHS PICU	0	10	Requires Improvement
Midlands	St Andrews Healthcare	St Andrews Healthcare - Northampton	Stowe	CAMHS Low Secure	19	10	Inadequate
Midlands	St Andrews Healthcare	St Andrews Healthcare - Northampton	Seacole	CAMHS Low Secure	19	10	Inadequate
Midlands	St Andrews Healthcare	St Andrews Healthcare - Northampton	Sitwell	CAMHS Medium Secure LD	14	10	Inadequate
South East	Priory Group Limited	The Priory Ticehurst House	Keystone Ward	CAMHS PICU	0	8	Inadequate
South East	<i>Southern Health NHS FT</i>	<i>Bluebird House</i>		<i>CAMHS Low Secure</i>	<i>6</i>	<i>0</i>	Closed
East of England	<i>Priory Group Limited</i>	<i>Priory Ellingham Hospital</i>		<i>CAMHS Low Secure LD/ASC</i>	<i>8</i>	<i>0</i>	Closed
South West	<i>Priory Group Limited</i>	<i>Priory Hospital Bristol</i>		<i>CAMHS PICU</i>	<i>12</i>	<i>0</i>	Closed
Midlands	<i>St Andrews Healthcare</i>	<i>St Andrews - Northampton</i>		<i>CAMHS Low Secure LD/ASC</i>	<i>17</i>	<i>0</i>	Closed
North East & Yorkshire	<i>Tees, Esk & Wear Valleys NHS FT</i>	<i>West Lane Hospital</i>		<i>CAMHS Low Secure</i>	<i>10</i>	<i>0</i>	Closed
London	<i>West London MH NHS Trust</i>	<i>Three Bridges (The Wells Unit)</i>		<i>CAMHS Med Secure</i>	<i>8</i>	<i>0</i>	Closed
				Total	355	296	

Length of stay

The median length of stay on a ward for all children discharged in 2019/20 was 60 days (2 months), with one in three children staying over three months. As the chart below shows, some of the 4,373 children discharged over the course of the year are staying much longer.

Figure 2: Children’s length of stay in mental health units



It is important to note that this only refers to their length of stay on that unit, as children could be discharged to another mental health unit, but it is not possible to calculate their total length of stay in hospital from the information we have. Children who were diagnosed with eating disorders stayed longer than those with other diagnoses, and stayed on average 126 days (4 months). There are clear differences in how long children stay depending on the ward type they are on, with children on Medium Secure wards staying the longest. Although children are not meant to stay on PICUs for longer than eight weeks, the table below shows they are on average staying for nearly 13 weeks, with many staying longer.

Table 12 - Average length of stay for children discharged from inpatient wards during 2019/20 by unit type

Unit type	Mean number of days	Median number of days	Over 90 days	Over 1 year	Total number of discharges
General Adolescent Inc. Eating Disorders	85	54	32% (1130)	2% (1130)	3507
Low Secure	305	279.50	89% (125)	32% (125)	142
PICU	90	59.50	37% (165)	2% (165)	448
LD	167	101.50	51% (35)	13% (35)	70

Unit type	Mean number of days	Median number of days	Over 90 days	Over 1 year	Total number of discharges
Medium Secure	445	351.50	94% (45)	50% (45)	48
Deaf Child	123	94	*	*	7
ASD	203	146	87% (15)	7% (15)	15

As discussed in more detail below, we know that there are children on these wards who should have been discharged earlier or should not have been admitted. This means that children spend longer than necessary on wards when they should be supported in the community, and also limits the number of spaces available for other children who need to be admitted.

Distance from home

Of the 944 children living on inpatient wards, 190 (21%) were living over 50 miles from home, with the median distance being 21 miles. This compares to 35% of children in youth custody placed over 50 miles from home. 7% (60 children) are staying more than 100 miles away from home, with a further 22 children living over 150 miles from home. Children in secure units are notably more likely to be placed more than 50 miles from their last known home postcode. Even after accounting for other factors, these children are 77% more likely to be detained more than 50 miles from home.

To inform this report we visited children in four mental health wards and spoke to them about their experiences; the [full report is published separately here](#)⁴². One of the teenage girls that we spoke to was admitted to the nearest available hospital bed two and a half hours away from her family home. This resulted in her only being able to see them once a week. Understandably, she spoke about being lonely and missing her family 'like hell'. Many children are likely to see their family even less frequently than this.

⁴² This research was conducted by Jack Roffe, HCPC Registered Clinical Psychologist

Restraint and segregation

The Mental Health Act code of practice sets out that restraint should only be used in mental health wards to ‘take immediate control of a dangerous situation where there is a real possibility of harm to the person or others if no action is undertaken’⁴³. For the children we spoke to on wards, the experience of being restrained was often traumatic:

“When you know those nurses are coming into the room it’s a wave of terror because you know that it’s happening and I do everything I can but when there’s like seven people on top of you trying to hold down each limb of your body, it’s the worst thing. I just cry – ‘don’t do it’ ” – Teenage girl

Therefore, it is vital to be able to monitor how often restraint is used against children in different settings, in order to understand why some settings are using restraint more frequently, and what can be done to reduce its use. It is particularly concerning then that the data currently available on restraint in children’s mental health settings is of very poor quality.

NHS Digital has recently started to publish monthly statistics on children who are restrained. However, on 10th November 2020, this information was removed from the website following a change in methodology and so the information is no longer available.

Annual data shows that 1,049 under 20s were subject to 10,545 restrictive interventions in 2018/19⁴⁴. There are concerns though that this data is not always complete, with the Care Quality Commission reporting that some providers return data that is ‘not credible’⁴⁵.

This data breaks down the restraints into different categories. These include:

- > prone restraint – this is where patients are restrained face down on the floor, which is particularly concerning as it can restrict breathing
- > chemical restraint - where patients are given medicine (often by injection) that is meant to control their behaviour, rather than because they have been prescribed it.
- > mechanical restraint - when devices such as belts or cuffs are used to restrict movement.
- > seclusion - when a patient is isolated away from other patients and not allowed to leave.
- > segregation - when a child is not allowed to mix with other patients on a long term basis.

Table 13 – Under 20s subject to restrictive intervention by type of intervention

Under 20s Subject to Restrictive Interventions	
Physical restraint - Prone	369
Physical restraint - Excluding prone	821
Chemical restraint	330
Mechanical restraint	29
Seclusion	382
Segregation	15
Total	1,049

⁴³ Department of Health, Mental Health Act 1983 Code of Practice, January 2015, para 26.36

⁴⁴ Mental Health Bulletin 2018.19, table 7.1

⁴⁵ https://www.cqc.org.uk/sites/default/files/20201023_rssreview_report.pdf

Children with a learning disability, autism or both in mental health wards

For any child, being admitted to an inpatient mental health hospital should be a last resort, as it can be a very difficult and disruptive experience. The priority should always be to support them at an early stage so they can stay at home or in the community. But for children with autism, a learning disability, or both, the unfamiliar, noisy and stressful environment of a hospital can be even harder.

Children and young people with a learning disability or autism should have a community Care Education and Treatment review before admission to a mental health hospital to determine if their care and treatment could be provided in the community⁴⁶

Children should also only be admitted for treatment of a mental health condition. Autism and learning disabilities are lifelong conditions, they cannot be treated by a stay in a mental health ward, yet as our report *'Far less than they deserve'* found last year, too often this is happening, even where a child has no co-occurring mental health condition⁴⁷.

For someone to be sectioned under the Mental Health Act, they have to have a mental disorder. The Mental Health Act only allows for a person with learning disabilities to be detained for treatment if they also show 'abnormally aggressive behaviour or seriously irresponsible conduct', although this does not apply to section 2 of the Act, so they can be detained for assessment⁴⁸. The Act does include autism as a mental disorder, although the 2015 Code of Practice makes clear that it is not a mental illness and so it should be very rare that someone meets the criteria for detention under the Mental Health Act because of autism alone. The recent review of the Mental Health Act did not reach a conclusion about whether this should be changed, but did acknowledge that there is a real risk that those with autism or learning disabilities are just being 'warehoused' – placed somewhere without any appropriate treatment in place⁴⁹.

This year, we were provided with data from NHS England for June 2020 which showed us that there were 225 children with learning disabilities or autism in mental health wards. 8% of patients had a learning disability only, 81% had autism only and 12% had both a learning disability and autism.

For those children the main diagnostic categories on admission were:

- > Mental illness – 59%
- > Learning disability – 3%
- > Challenging behaviour – 8%
- > Autism – 12%
- > Self-harm – 13%
- > Other – 6%

Of these 225 children, 135 were admitted under Section 2 of the Mental Health Act, while 80 were admitted informally.

Children with learning disabilities had very long stays in their wards – 199 days on average. They stayed in hospital altogether (including moving between different inpatient wards) for longer – an average of

⁴⁶ <https://www.england.nhs.uk/learning-disabilities/care/ctr/>

⁴⁷ <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2019/05/CCO-far-less-than-they-deserve-2019.pdf>

⁴⁸ Mental Health Act Code of Practice

⁴⁹ percentages are rounded so do not add up to 100

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778897/Modernising_the_Mental_Health_Act_-_increasing_choice_reducing_compulsion.pdf

257 days (about 8 and a half months). Only 29% of children had an agreed date for transferring out of the ward, and of those:

- > 50% were due to transfer within the next 3 months
- > 9% were due to transfer within the next 3-6 months
- > 19% were due to transfer within the next 6-12 months
- > 20% of patients planned transfer was overdue

15% of children were deemed on their care plan not to need inpatient treatment, with 11% working towards discharge while 4% had a delayed discharge.

Data from the NHS shows that 45 children (20% of patients) with learning disabilities or autism were subject to restraint in June 2020, with 620 incidents⁵⁰. This includes 40 incidents where a child was secluded. This means that on average each of those 45 children were restrained 14 times that month, or every other day. The most frequently used form of restraint was when a child was standing (23% of restraints) but 12% of restraints were 'prone', where a child is lying face down, and 17% were where the child was lying on their back.

The data on how far children with learning disabilities and autism are placed from their homes was listed as 'unknown' for all children in this dataset. Information is available in the Monthly Health Services Dataset which shows the following numbers of children were living long distances from their homes:

Table 14: Number of children with a learning disability or autism, by distance from home

Distance from home	Number of children	Percentage
Up to 10km	50	32%
11-20km	15	9%
21-50km	35	21%
51-100km	25	14%
Over 100km	30	19%
Unknown	5	4%

⁵⁰ Learning Disability and Autism Monthly Statistics June 2020, Mental Health Services Dataset, NHS Digital

Children informally admitted to mental health wards

The above data shows that nearly a third of children in mental health wards are there ‘informally’, that is on the basis of their own or their parent’s consent, rather than being formally detained under the Mental Health Act. We wanted to understand what life was like for children admitted informally, whether they truly felt their admission was voluntary and they were free to leave, and how their experience differed to those admitted under the Mental Health Act. We visited four mental health wards – two general adolescent, one PICU and one eating disorder unit – in two mental health hospitals to interview children about their experiences.

[The full report on children’s views and experiences is available here](#)⁵¹.

The children that we spoke to who had been detained under the Mental Health Act, often had very negative views of that process, and struggled with the new limitations on their freedom that it imposed:

“It’s a law isn’t it...I’m a kid at the end of the day. I’m being detained by a law when I haven’t done anything wrong, it’s like a punishment...but, for being ill” – Teenage girl

“Awful. It’s so weird to go from being out of hospital to going in hospital and being on a section. You can’t decide when you open the door, you can’t decide when you leave and go out and see your friends. You can’t do any of that. You have to have a piece of paper that is signed by someone who thinks that they are higher up to decide when you get to leave a building” - Teenage girl

Being admitted informally was therefore seen as preferable for some of the children we spoke to. It meant that they retained a sense of autonomy and control over their treatment, and also gave them more freedom to freely leave the hospital.

“I feel quite proud of myself in the way that I’ve took a stand and said look I know that I am in crisis and I need this help and that I’ve been able to have a say in that really. It helps recovery a lot more really” – Teenage girl

“If I want to go on leave last minute or something...to go out for a meal or something then just get the risk assessment straightaway. It feels nice to be able to say that I would really like to go out and be able to do that” – Teenage girl

Children spoke to us more generally about how important it is for them to be listened to and involved in decision making about their own treatment, and how upsetting it can be when they are not:

“We don’t want to be just sat here in the dark whilst people make decisions about our lives” – Teenage girl

“I didn’t feel involved in it at all, I felt I was almost an object being moved” – Teenage girl

⁵¹ Experiences of children admitted to in-patient wards

However, the research also raised serious questions about whether some children who have been informally admitted are there on the basis of consent that is not truly valid, as they felt they only consented to avoid the threat of being sectioned:

“I’m only staying informally because I don’t want to be put on a Section 3. So, again, you’re consenting to treatment but only because I don’t want to be put on a Section 3. Don’t get me wrong, I want to get better, but I don’t want to be here, I’d rather be at home” – Teenage girl

“Last time I said I’d go informally but again; it was under that thing of...I could agree to come informally on the Tuesday, or I could be sectioned and come in on the Wednesday. It’s not a choice is it?” – Teenage girl

Additionally, those children who were admitted on the basis of their parents’ consent felt similarly powerless in decision making to those admitted under the Mental Health Act, and also felt that their parents didn’t really have a choice.

“My parents just made the decision, I was 15 then, so I didn’t really get much of a say” – Teenage girl

“My parents didn’t... want me to be taken into care. They had felt very threatened I think by it and the whole process, because it’s very intimidating, the whole thing. It’s like playing with the law really but about your health” – Teenage girl

A recent Supreme Court ruling has made clear that parents cannot consent to the deprivation of liberty of their 16 or 17 year old child, even if that child does not themselves have capacity to consent⁵², and the review of the Mental Health Act also concluded that this should not be allowed⁵³. The Mental Health Act Code of Practice says that for under 16s ‘it is not advisable to rely on the consent of a parent with parental responsibility to admit or treat a child who is competent to make the decision and does not consent to it’⁵⁴, but this does not apply to those children who are not judged competent to make the decision.

Children who have been informally admitted are also at risk of being unlawfully deprived of liberty as they do not really have the ability to leave; one child described what she felt would happen if she tried to exercise her right to leave the hospital:

“It’s not true. You can come and go at your will? If I go to the nurse right now and say right, I want to leave, I would get put on hold for 72 hours, wait for the Doctor and then I will get put on a Section 3” - Teenage girl

Concern about informal patients being unlawfully detained has regularly been raised by the CQC in their annual review of the Mental Health Act⁵⁵.

There is clearly a very difficult balance to strike here. Children told us how much they value being involved

⁵² <https://www.supremecourt.uk/cases/docs/uksc-2018-0064-judgment.pdf>

⁵³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778897/Modernising_the_Mental_Health_Act_-_increasing_choice_reducing_compulsion.pdf

⁵⁴ Mental Health Act Code of Practice 2015 paragraph 19.39

⁵⁵ Monitoring the Mental Health Act 2018/19, CQC

in decision making about their own treatment and being listened to, and admitting children based on their own genuine consent can be a way to respect that decision-making ability. But there are also risks that these children can end up de-facto detained, without all the safeguards that children formally detained have – such as the right to an Independent Mental Health Advocate, to be provided with information about their rights, and to have complaints investigated by the CQC. The recent review of the Mental Health Act has recommended that all informal patients should have the right to an advocate, to address this very concern. This recommendation should be addressed as soon as possible, alongside requirements for those admitted informally to have the same legal safeguards as those detained.

Comparisons between children in different settings

In this section we examine the significant demographic differences between children securely detained in different types of setting for different reasons, but also show that, regardless of the setting they end up in, there are clear similarities between the needs of these children.

Ethnicity

As we reported last year, it continues to be the case that black and mixed-race children are over-represented in the youth custody estate, while white children are under-represented⁵⁶. Black, Asian and Minority Ethnic children are also still more likely to be in YOIs than white children – with 80% of BAME children in those institutions compared to 68% of white children⁵⁷. This could be driven in part by the fact that Black children are over four times as likely as White children to be arrested by the police (which in itself may be reflective of racial bias) but may also reflect other inequalities as highlighted in the Lammy Review, such as more custodial sentences being given to BAME defendants than White defendants⁵⁸, and differential use of diversion schemes⁵⁹. It is welcome that the Ministry of Justice has established a Youth Justice Disproportionality Team as it is clear that there is urgent work to be done at each stage of the criminal justice process to address this issue⁶⁰.

There is no information published on the ethnicity of children in Secure Children’s Homes placed on a welfare basis, so the most up to date information is still the survey referenced in our report last year which found that 79% of children detained for welfare reasons (and therefore presumably held in SCHs) were white, 9% were black and 12% were mixed/other⁶¹.

The proportions of children from different ethnic backgrounds in inpatient mental health wards reflects the general population more closely:

Table 15: Children in mental health wards and custody by ethnicity

	Youth Population (under 18s)	Custody	Mental inpatient population	Health	General Population of Under 19s
Asian/Other		11%		8%	11%
Mixed		13%		5%	5%
Black		27%		5%	5%
White		48%		73%	79%
Not Known		1%		8%	

However, analysis of all children in inpatient mental health wards at 31st March 2020 shows that, even once we control for diagnosis and other demographic factors Black children are less to be admitted informally, when compared to their White peers - around 1 in 10 of these children are admitted informally compared to just over 1 in 3 White children⁶². They are more likely to be held in secure wards or PICUs than their White peers; just under 1 in 2 Black children are held in low/medium secure/PICU units compared to 1 in 4 White children. They are also slightly more likely to be admitted

⁵⁶ Youth Custody Report, March 2020

⁵⁷ Youth Custody Data, March 2020

⁵⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

⁵⁹ <https://committees.parliament.uk/publications/3399/documents/32490/default/>

⁶⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881317/tackling-racial-disparity-cjs-2020.pdf

⁶¹ Hales, H. et al, (2018), Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report, NHS England, Figure 5

⁶² For a full analysis of all the disparities identified within mental health settings, see the technical report published alongside this paper

from criminal justice related sources than white children, though the proportions of admissions are small (4% amongst Black children compared to 1% amongst White children). This could suggest that Black children progress further through the criminal justice system before a mental health condition is identified. Alongside the disparities in youth custody, this raises serious concerns about how Black children are viewed, and perhaps more easily judged as ‘criminal’ than in need of help.

Gender

Many more girls than boys are admitted to inpatient mental health wards, both formally and informally – 75% of the children on inpatient wards are girls, and 74% of those detained under the Mental Health Act are girls. This is in marked contrast to adults, where more men are detained under the Mental Health Act than women. Boys are notably more likely to be diagnosed with schizophrenic disorders but are less likely to be diagnosed with neurotic, stress-related and somatoform disorders (somatoform disorders are those where patients persistently request medical investigations, in spite of repeated negative findings and reassurances by doctors that the symptoms have no physical basis) and eating disorders. 89% of children admitted with an eating disorder over the course of the year were girls.

Table 16: Proportions of children in inpatient wards at 31st March 2019 by gender and high level diagnosis type

High level diagnosis type	Female	Male
Eating disorders	35% (160)	24% (30)
Schizophrenia, schizotypal and delusional disorders	3% (10)	21% (25)
Mood [affective] disorders	14% (65)	12% (15)
Neurotic, stress-related and somatoform disorders	18% (85)	8% (10)
Disorders of adult personality and behaviour	6% (25)	0 (0)
Disorders of psychological development	6% (30)	10% (10)
Behavioural and emotional disorders with onset usually occurring in childhood and adolescence	13% (60)	14% (15)
Other	4% (20)	11% (15)

Boys are more likely than girls to be admitted under a ‘forensic’ section, again raising questions about why those mental health concerns were not identified before they reached court or custody.

Girls are much less likely than boys to be in youth custody – and indeed the majority of youth custody places are reserved for boys (all YOIs and Oakhill STC only accept boys). Only 3% of those in youth custody are girls. Given the high levels of mental health problems experienced by boys in custody, this data could indicate that boys whose offending may be linked to ‘externalised’ mental health problems are not being appropriately picked up and diverted to mental health services.

Data is not published on the gender of children in SCHs on a welfare basis – however, by combining

information from the Department for Education and Youth Custody Service we can estimate that there were 44 boys and 45 girls in SCHs in February 2020 (this will include those in Wales). Data provided to us by the Secure Welfare Coordination Unit on the number of children referred to SCHs for a welfare place over the course of a year show that 49% were girls. This suggests that there is relatively equal demand for, and use of, Secure Children's Homes for boys and girls.

Needs

In this report we look at all the different kinds of settings that are available to accommodate children securely, and the numbers of children in them. We have done this because we believe it is essential that government – national and local – start to think in a much more joined up way about all the children who might need secure care, and why they end up in different institutions with very different design.

The NHS Long Term Plan talks about a group of children it terms 'high-harm, high-risk, high-vulnerability', having identified that there are a group of children at risk in many ways⁶³. The NHS commissioned several reports which highlighted the overlapping needs of children in different types of secure institution, which we covered in detail in our report last year.

We now have further evidence about the needs of children in secure institutions, as the Ministry of Justice has produced new information about the needs of children in custody. This shows that 49% of children in custody were looked after when they were admitted to custody, or had been previously. 18% were on Child in Need plans and 6% were on Child Protection plans. 78% of children in custody were identified, by youth offending teams or staff from their custody setting, as having mental health concerns⁶⁴.

The Secure Welfare Co-ordination Unit has also provided information about the needs of children referred to secure children's homes on welfare grounds. This shows that 55% of the children referred had mental health needs, and 84% of children referred had either been charged with a criminal offence or had an investigation pending.

While the overlap of needs between children in different settings is by no means absolute, it is clear that there is a significant group of children who have a mixture of mental health needs and social needs, and have been involved in offending or high risk behaviour. Their needs are not being met by the current siloed system of secure accommodation for children in this country.

⁶³ <https://www.england.nhs.uk/commissioning/health-just/children-and-young-people/>

⁶⁴ <https://www.gov.uk/government/statistics/assessing-the-needs-of-sentenced-children-in-the-youth-justice-system>

Children falling through the gaps

Depriving a child of their liberty is one of the most significant interventions the state can make. Locking children up should be a last resort. When it is necessary, it is essential that there is due legal process, as well as close scrutiny of the conditions children are living in. For this to happen we need, at the very least, to know how many children are deprived of liberty, and where they are living.

The number of children being detained in secure settings overall appears to be decreasing – largely driven by decreasing numbers of children in youth custody. This is an apparently positive development which has been widely welcomed. This reduction, however, masks a hidden group of children who are also deprived of their liberty outside of the official secure settings outlined above, but whose numbers are unknown, and may well be growing as the number of children in official settings falls.

This report has so far covered children deprived of their liberty in three different ways:

- > Children deprived of liberty in mental health settings who will be legally detained under the **Mental Health Act**
- > Children deprived of liberty in youth custody settings who will be legally detained under various pieces of **criminal justice legislation**
- > Children deprived of liberty in secure children's homes for welfare reasons who will be legally detained under **Section 25 of the Children Act**

For all of these children information is published on at least an annual basis to set out how many children are detained.

However, there are other groups of children where information is not published. This section of the report therefore looks at:

- > **Children deprived of liberty under the Mental Capacity Act.** This Act applies to children over 16, who do not have the capacity to consent to being deprived of liberty – for example because of a learning disability – but where it is judged this is needed to keep them safe. The Mental Capacity Act sets out how this should be used, but no data is published on the number of children affected.
- > **Children deprived of liberty under the inherent jurisdiction of the High Court.** This is what courts use when no piece of legislation provides a way for a child to be deprived of their liberty, but a judge rules that it is necessary to keep them safe. It is therefore used when a child 'falls through the gaps' in existing legislation. For example, it will be used if a child is to be deprived of liberty in a non-secure children's home for their own welfare, rather than a Secure Children's Home – either because that meets their needs better, or because no Secure Children's Home bed is available. This is because it is legally only possible to use Section 25 of the Children Act to send a child to a children's home if it has been formally approved by the Secretary of State for Education as a Secure Children's Home. This has led to some judges describing a 'parallel process' where children who go to an official Secure Children's Home are detained under Section 25 of the Children Act, while others who go to what is described as a 'quasi-secure' children's home, which is not approved as secure, are detained under the inherent jurisdiction. Even if somewhere is not officially a secure setting they can be authorised to 'lock up' a child – by keeping doors locks, supervising a child, not letting them leave the house – through the inherent jurisdiction.

- > **Children deprived of their liberty without any legal authorisation.** These are children who may be living in similar conditions to those formally deprived of liberty – unable to leave a home of their own free will, or being supervised constantly – but where nobody has sought legal authorisation from a court.

In this chapter we look at the number of children deprived of liberty in each of these ways, and consider for each group whether there are sufficient legal safeguards in place to protect their rights. We then explore whether these children are living in places which are safe and appropriate.

Numbers of ‘invisible’ children deprived of liberty and the legal basis for deprivation

Number of children deprived of liberty under the Mental Capacity Act

Children aged 16 and 17 can be deprived of their liberty under the Mental Capacity Act in the Court of Protection. There is no official information published on children deprived of their liberty in this way, but we requested this information from the Ministry of Justice for the past three years:

	2017/18	2018/19	2019/20
Number of children	89	43	59

Are appropriate legal safeguards in place?

The Mental Capacity Act and its accompanying guidance sets out in what circumstances a child aged 16 or over can be deprived of liberty. Currently, a Local Authority would need to go to the Court of Protection to have this authorised by a judge. From April 2022 a new system will be introduced called the Liberty Protection Safeguards, which will allow children aged 16 and 17 without mental capacity to have their deprivation of liberty authorised by Local Authorities, Clinical Commissioning Groups or hospital managers, without having to go to court. The Law Commission suggested this change, as they concluded that it was not acceptable

‘to require that, unless the use of the Mental Health Act is appropriate, a court application must be made in order to authorise a deprivation of liberty. This is unnecessarily onerous and expensive for the State (especially NHS bodies and local authorities, which are often expected to bring cases to court), and potentially distressing for the young person and family concerned.’⁶⁵

They also raised concerns that many Local Authorities were already not complying with their duties to go to court in these cases, suggesting the current system was not doing enough to protect children’s rights. However, this lack of compliance could be due to a lack of training or understanding, rather than an issue with the process itself. The Children’s Commissioner’s Office is clear that there must be strict safeguards in place for 16 and 17 year olds, so that the new arrangements do not reduce the protections in place for children, and that clear guidance and training must be in place to make sure areas are aware of their legal duties. This must also be accompanied by very clear recording processes which allow for these decisions to be subject to the necessary level of scrutiny.

Children deprived of liberty under the inherent jurisdiction of the High Court

There is also no information published on children deprived of their liberty through the inherent jurisdiction of the high court. We have, however, received information from CAFCASS about the number of children on applications where CAFCASS have been made a party to the case, which provides the best

⁶⁵ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/03/lc372_mental_capacity.pdf

available estimate of this number.

These numbers show that over the past three years the use of the inherent jurisdiction has been increasing. The inherent jurisdiction is often used when Section 25 of the Children Act would normally be used, but cannot be because the child is not being placed in a Secure Children's Home. It is therefore interesting to note that according to the comparable information from CAFCASS there are nearly as many children on applications through the inherent jurisdiction as through the statutory regime under Section 25 of the Children Act 1989.⁶⁶

	2017/18	2018/19	2019/20
Children on Deprivation of Liberty Applications through Inherent Jurisdiction	103	215	327
Children on Secure Accommodation Order Applications under Section 25 Children Act	429	425	347

The Ministry of Justice does provide information on the number of children in England and Wales on applications for Secure Accommodation; their information shows that in 2019/20 there were 514 children on applications for Secure Accommodation. CAFCASS data does not include children in Wales, and will also not include children where CAFCASS is not involved. This has been fairly steady for the past three years but has risen since 2011, when 302 children were involved in these applications⁶⁷.

Are appropriate legal safeguards in place?

Because the inherent jurisdiction is used when no other legislation can be used to deprive a child of liberty, there are no regulations and no government guidance that clearly sets out when and how the inherent jurisdiction should be used.

Children placed under the inherent jurisdiction of the court do not have access to the same legal safeguards as children placed under the Children Act. Although successive judges have set out in case law how applications should be made, they are not equal to the protections set out for Section 25 of the Children Act. For example, a child is only entitled to an annual review rather than reviews at 3 months and then 6 monthly, which is the requirement under the Children Act. It is also not clear whether the court needs to authorise the plan before a child is placed, as they do for Section 25 accommodation orders (except in emergencies).

In addition, because there is no information provided to regulators, the Department for Education or the Children's Commissioner about these children, it is harder to ensure that they are living in appropriate, safe conditions – this is discussed in more detail in the next section on where children are living.

⁶⁶ Both sets of figures for 2019/20 include data until the end of March 2020, so may have been affected by Coronavirus related restrictions on courts.

⁶⁷ Family Court Statistics Quarterly, Table 3

Supreme Court Intervention

The Children's Commissioner, with the support of Leigh Day, Victoria Butler-Cole QC, Alex Ruck Keene and Edward Bennett, recently intervened in a Supreme Court case about the use of the inherent jurisdiction in order to highlight her concerns about the legal protections in place for these children, and the appropriateness of their accommodation. The intervention is published alongside this report. Judgment is awaited.

Children potentially illegally deprived of liberty

We are also concerned that those children where a court order is in place may just be the tip of the iceberg when it comes to children who are locked away but do not appear in official statistics. Through our Help at Hand service we have been alerted to several children living in situations which clearly amounted to a deprivation of liberty, but where no court authorisation was in place. It is impossible to put an exact figure on the number of children in this situation, as by their nature they do not appear in any formal records. We can therefore only detail what we know about children we have identified in this situation.

For example, we supported a 14 year-old boy we will call Adam, who was in care. As his local authority was unable to find a home for him, he was housed in a campervan under 3:1 supervision with staff on 72 hour shifts. Although this amounted to a deprivation of liberty, we do not believe the council had applied for an authorisation from the court.

We therefore carried out research⁶⁸ to understand more about how many other children might be in a similar position to Adam and other children we had helped. Our research team visited 13 children's homes, residential special schools and mental health wards.

During this research we found significant concerns about children who appear to be deprived of their liberty illegally, without the appropriate legal safeguards in place. In all the settings we visited, there were children who needed a high level of care because of the trauma or difficulties they had experienced. While it is of course right that children's physical safety is the priority, that cannot be allowed to override the fact that these children also have a right to freedom, and that this should only be restricted or removed with a high degree of careful consideration, appropriate legal safeguards, and the ability to appeal any decision.

Many of the children we met were living with high levels of restrictions in place. One of the residential special schools, for example, used restraints such as 'safe space' beds which are fully enclosed zipped beds which a child could not get out of without help. They also used lap belts on wheelchairs and various types of walking harnesses. The Challenging Behaviour Foundation has frequently raised concerns about the high levels of restraint being used on children with disabilities in schools⁶⁹.

In some settings we were concerned that the constant level of supervision, the inability of children to leave, and the lack of clarity about who was providing consent or authorisation for the arrangements, could all amount to a deprivation of liberty. Often children were not allowed to leave the home, even to go into the garden, without staff supervision and knew that police would be called if they did. Some

⁶⁸ Research was carried out with the British Institute of Learning Disabilities

⁶⁹ <https://www.challengingbehaviour.org.uk/learning-disability-assets/rireportfinal.pdf>

children in a children's home explained:

"I can walk around the bit of garden but staff come with me, they follow you everywhere, it feels like a jail. Even if I am really calm, I can't go out on my own"

"We can go into the garden but have to ask an adult to unlock the door"

"Getting out the house when I want to – sometimes they hold me back by saying they're short staffed. If I just walked out, I'd have the police called on me. I can't say I've actually done it. Quite often I can't get out the house when I want to"

All of the children reporting these levels of restrictions were looked after children, but there was no deprivation of liberty authorisation in place.

For children in these settings it was clear that the limitations on their freedom were very hard to live with; one child described themselves as feeling

"as if my rights were being stripped away"

Many of these children were older teenagers, who would soon be transitioning to adult provision. They would be unlikely to get this level of supervision and care in those settings, and staff and children were concerned about how they would manage.

These high levels of restrictions were not in place across the board, with some children able to leave the placement alone when they wished to do so, and spend time by themselves in the community.

Although this research was by its nature limited in scope, it is telling that in the small sample of high needs settings we visited we identified children where this appeared to be an issue of concern. This does support the view that there could be many 'invisible' children who are being deprived of their liberty, without any of the legal protections they are entitled to, and who do not appear in any official data about children locked up. We intend to undertake a data collection to local authorities in 2021 to get more information on how many children are deprived of their liberty in this way.

A lack of training and guidance leads to confusion about the law

When speaking to staff about the processes for reviewing the restrictions placed on children, we found that there was often a lack of understanding about the concept of deprivation of liberty. In mental health settings, partly due to the framework of the Mental Health Act, this understanding seemed to be more consistent – although as discussed previously in the report there are issues around children admitted informally. It is worth noting that the one setting of the 13 we visited where there were legal authorisations in place to deprive children of their liberty was designed to be a step-down placement for children leaving inpatient mental health settings.

We discussed with staff and managers in each setting whether they had received training on deprivation of liberty, and only six of the thirteen settings reported that they had. Across the settings there was generally a low awareness of the issue of deprivation of liberty, compared to a good level of understanding around Children's Home regulations. When researchers set out some of the case law around deprivation of liberty, staff in four settings identified that children previously in their care might have met this threshold but without any authorisation in place. Only six settings reported having any formal process to review the level of restrictions in place.

Some staff and managers discussed that decisions around restrictions of liberty would be agreed and signed off by the child's social worker, however in the discussions we had with social workers to follow up they also spoke about their limited understanding of this area.

The low level of knowledge of this area is perhaps unsurprising – there is no legislation that sets out when children can be deprived of their liberty for welfare reasons in a non-secure children's home, and no guidance on the issue. Most of the law has grown out of case law which sets out what can constitute a deprivation of liberty and how the concept applies to different age groups. But there is therefore no clear framework or set of regulations which Children's Home staff and social workers can familiarise themselves with.

And this law interacts with guidance and regulation that is already confusing. Children's Homes regulations⁷⁰ say that restraint can only be used to stop a child leaving a secure children's home, although guidance sets out that there may be circumstances where it can be used to manage immediate risk⁷¹. The same guidance later states that children's homes should not 'routinely' deprive children of liberty, perhaps implying that they can legally do so 'non-routinely'. Martin Narey's review of the residential care system suggested that the Department for Education needed to issue further guidance to reassure homes that they could legally lock doors and restrain children to prevent them from leaving⁷². However, it is not clear that doing this would be in line with current case law around deprivation of liberty. Guidance has been produced on reducing restrictive intervention of children with learning disabilities, autistic spectrum conditions and mental health difficulties in health and social care services and special education settings, which includes some additional limited information on deprivation of liberty, but states that

*'There is currently no central guidance to advise local authorities or others on decisions relating to deprivation of liberty orders'*⁷³.

There appears to be a clear need for additional clarity in this area, so that staff can do what is necessary to keep children safe, while children's right to liberty is also protected.

Children should only be deprived of their liberty as a last resort – so this is certainly not a call for these children to instead be sent to secure settings just so they are 'legally' in the right place. What is needed however is assurance that the appropriate legal safeguards are put in place to ensure that restrictions on liberty are only happening when absolutely necessary, and for as short a time as possible.

⁷⁰ https://www.legislation.gov.uk/ukxi/2015/541/pdfs/uksi_20150541_en.pdf

⁷¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/463220/Guide_to_Children_s_Home_Standards_inc_quality_standards_Version_1.17_FINAL.pdf

⁷² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/534560/Residential-Care-in-England-Sir-Martin-Narey-July-2016.pdf

⁷³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812435/reducing-the-need-for-restraint-and-restrictive-intervention.pdf

What we know about where these ‘invisible’ children are living

For all the groups of children described above – children deprived of liberty under the Mental Capacity Act, the inherent jurisdiction, or with no legal authorisation - there is no published information about where children are living. Children in all three groups could end up in similar settings including children’s homes and residential schools, or in ‘unregistered’ settings which illegally provide care for children but are not registered with Ofsted as a children’s home.

Through our research, conversations with professionals, calls to our helplines, and alerts from judges we believe these children are likely to fall into two groups:

- > children for whom a Secure Children’s Home is not the preferred option, and a more specialist setting which is still able to restrict their freedom is more appropriate.
- > children who are judged to be in need, sometimes desperate need, of a Secure Children’s Home, but where none is available, and so they end up in unsuitable and potentially dangerous places.

Children in specialist settings

The first group outlined above is children who are in settings appropriate to their needs. They need a high level of supervision, but a secure children’s home would not be the right place for them. For example, during the course of our research we met children placed in a children’s home which was not secure but where several children were formally deprived of their liberty through the inherent jurisdiction. This home had clearly had high levels of restrictions in place, even though it was not officially a Secure Children’s Home. For example, the children told us:

‘You have to find staff if you want to go out the front door into the garden – unless you can work up to getting your own job – but this is really hard’

‘We live in the same 4 walls 24/7 and the front door is locked. It’s hard’

‘I’m nearly 18 and I can’t get out of my own front door. I need to find staff to let me out for fresh air’.

However, the setting was designed to provide a high level of therapeutic care for children, and was highly specialised to do so, so it did appear that this was a more appropriate placement than a Secure Children’s Home. In addition, as the setting itself was not secure, children could work towards achieving greater levels of independence and freedom, while remaining in the same home with the same carers, than would be possible in many Secure Children’s Homes.

Similarly, we visited a children’s home which cared for children with learning disabilities and autism. Although we identified high levels of restrictions in place and lack of clarity about the authorisation for it, the children there were being well cared for and supported, and it was clear that a Secure Children’s Home would not be a preferable option.

Research has shown that there are often difficulties for those transitioning out of secure care, with suggestions that there is a need for increased level of flexibility for ‘step-down’ arrangements which allow for some degree of restriction on children’s freedom without having to return a child to a setting designed to be secure⁷⁴. There has been consideration given to piloting services which are given more freedom on

⁷⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/582375/Local-authority-use-of-secure-placements.pdf

regulations around restricting liberty, although ultimately it was decided not to do so⁷⁵.

Even if these children are in places that are more appropriate for them than Secure Children's Homes, because they are not in homes officially designated as secure they do not benefit from the enhanced safeguards that apply to children in Secure Children's Homes.

For example, Secure Children's Homes are inspected twice a year by a dedicated Ofsted team, and there is a separate framework for inspecting them because of the increased vulnerability of children in closed settings. Non-secure children's homes which deprive children of their liberty, as in the example we visited, may only have an inspection once a year (if they are good or outstanding, although can be inspected twice a year if the regulator deems this necessary). These homes will also not be inspected against the Secure Children's Homes framework.

Additionally, Secure Children's Homes have to be approved by the Secretary of State for Education, whereas homes holding children on deprivation of liberty authorisations do not. The Secretary of State also has to authorise the placement of any child under 13 in a Secure Children's Home, whereas this is not the case for a child with a deprivation of liberty authorisation placed elsewhere.

Finally, the National Preventative Mechanism (of which the Children's Commissioner's Office is a member) ensures that member regulators conduct regular visits to places of detention in order to prevent torture and other ill-treatment, as required by the Optional Protocol to the Convention Against Torture. As there is no information about where children who are deprived of their liberty are living, it is not possible to ensure the settings they are living in are visited by the NPM.

Children deprived of their liberty in unsafe or inappropriate accommodation

We are even more concerned about a group of children who are being deprived of their liberty in settings which are **not** deemed appropriate. These children appear to be at risk of significant harm because they are desperately in need of a placement that can manage the high level of risk that they present, and hold them securely, but there are none available. Some of these children are not only in these inappropriate situations, but are being detained there without any legal authorisation. In this section we explore how many children might be in this position, and the different types of accommodation they are in.

How many children are in this position?

Again, there is no official data on these children. However, one way to try and establish how many children are in this position is to look at the children who are referred by social workers for places in Secure Children's Homes but are turned away. This suggests that they are considered to be in need of secure, but a place is not available.

The Secure Welfare Co-ordination Unit⁷⁶ (SWCU) found that, on average in June 2019, 30 children a day were waiting for an available place in a Secure Children's Home. Their latest data shows that the number of children waiting for a place peaked at 41 children in October 2019⁷⁷. Data provided by the SWCU also shows there were 492 referrals for children in the year⁷⁸, of which 212 did not get a place. Some of these children will have been successfully placed elsewhere, but there were 135 children who, over the course of the year, were referred multiple times and still did not receive a place. 85 children were referred over 6 times, and/or were rejected by homes over 3 times, but still did not receive a place.

⁷⁵ https://dera.ioe.ac.uk/28509/1/Child_sexual_exploitation_safe_steps_project.pdf

⁷⁶ A small unit grant funded by the Department for Education (DfE) for the purposes of handling referrals and collecting data on secure welfare

⁷⁷ Secure Welfare Unit Annual Report England, January 2019 to December 2019.

⁷⁸ July 2018 to June 2019

This shows that social workers are referring, sometimes repeatedly, children to Secure Children's Homes as they believe that is what is needed to keep them safe. We cannot be certain that those children who are turned away from a secure place are being deprived of liberty wherever it is they are living as they await placement, but it is likely that they may be.

What accommodation are they in?

All the children who are not getting into Secure Children's Homes will by definition be ending up in settings that have not been formally approved by the Secretary of State as secure homes. Some of these children may be in registered children's homes that are no longer able to cope with their needs. However, there is also a range of evidence to suggest that some children in need of a secure placement are being placed in settings which are not even registered with Ofsted, although these children are hard to find. During the course of our research, we heard from staff about a child asked to leave a placement and sent to live in a caravan. We have also found some placements that advertise crisis placements of less than 28 days, with caravans provided, specifically for children who might otherwise need a secure bed⁷⁹.

The latest report from the SWCU shows that 10% of children referred for a secure home in a year were living in unregulated semi-independent settings at the time they were referred, and a further 16% of children referred for a place in secure were in 'other' settings which includes being held by police, or living in unregulated placements, holiday lets and rented houses with staff. Additional data that the SWCU provided to the Children's Commissioner's Office shows that of the 85 children repeatedly referred and repeatedly rejected by secure homes, 16 were living in what were described as unregulated, independent or semi-independent settings⁸⁰.

The Department for Education carried out a survey with 22 local authorities on their use of unregulated and unregistered placements. An unregulated placement is one which does not need to register with Ofsted as they only provide 'support' not 'care' to children. An unregistered setting is one which is operating illegally, as it is providing care should be registered with Ofsted. In this survey, three Local Authorities reported that they used settings which they considered to be 'unregulated' (rather than unregistered) as an interim measure while they waited for a secure bed to become available⁸¹. It is unclear how a child in need of a secure bed could safely be cared for in an unregulated setting that only provides 'support', unless that setting was in fact operating illegally and providing care without registering with Ofsted.

This all suggests that there are a significant number of extremely vulnerable children, who professionals have decided are in need of one of the hundred beds in Secure Children's Homes in the country, who instead end up in places that are not even registered with Ofsted, let alone registered as secure homes.

The President of the Family Division of the High Court has given welcome clarification that these unregistered places should urgently seek registration if they are caring for a child deprived of liberty, but it is very concerning that this is happening in the first place. Additionally, Ofsted have informed us they will always ask if any child in a children's home they are inspecting is on a deprivation of liberty

⁷⁹ <https://www.care4children.co.uk/crisis-service/>

⁸⁰ This data was provided by the Secure Welfare Coordination Unit

⁸¹ <https://www.gov.uk/government/publications/use-of-unregulated-and-unregistered-provision-for-children-in-care>

authorisation, so they can determine if appropriate processes are being followed. However, this will only cover children who are actually in settings registered with them, as they do not currently routinely request information on all children deprived of liberty as part of their Local Authority inspection frameworks⁸². Without information on where these children are living, it is not possible for Ofsted to ensure that settings are abiding by the court's requirements for them to register and then be able to inspect them.

Lack of capacity in secure children's homes

One way to understand why children are ending up in this position is to examine court cases that are published. In 2018 the President of the Family Division granted a deprivation of liberty order, and noted his concern

*'that so many young people are now being placed in secure accommodation outside the statutory scheme laid down by Parliament in units which, by definition, have not been approved by the Secretary of State as secure children's homes. Whilst the High Court has a duty to consider such cases and must come to a decision taking account of the welfare needs of the individual young person, in the wider context the situation is fundamentally unsatisfactory'*⁸³

In the past 6 months the Office of the Children's Commissioner has been involved with or aware of several cases before the High Court which have been made public:

Re G

In this case a 16 year old was placed in an adult mental health ward, and when he was ready to be discharged the Local Authority reported that not only was there no secure home willing to take the child, but nor was any registered children's home of any kind anywhere in the UK. The only placement they could find was a setting which was not willing to register with Ofsted, but the judge still felt compelled to authorise the placement in order to keep the child safe; they did so however with 'grave reservations'.⁸⁴

Re S

In this case a 15-year-old girl (who asked to be known as Samantha) was asked to leave by her secure children's home as they no longer felt able to care for her. She was moved to an unregistered holiday cottage where she was subject to constant supervision by three members of staff; one weekend she had to leave the home because it had been let out to holidaymakers. This was the 16th place she had lived in over the course of a year. The judge in the case, Mr Justice Cobb said that *'Samantha's case is depressingly all too familiar to those working in the Family Court, and is I believe indicative of a nationwide problem'*⁸⁵

Re Z

In this case a 13 year old girl who was at risk of serious harm was asked to leave her secure children's home, as they could no longer care for her, and the Local Authority was unable to find any

⁸² Ofsted have informed us they intend to do this when they return to routine inspection. Once introduced this will enable Ofsted to evaluate whether children are in adequate settings and whether appropriate legal safeguards have been followed. This has not been part of inspection to date.

⁸³ <https://www.familylawweek.co.uk/site.aspx?i=ed193091>

⁸⁴ <https://www.judiciary.uk/wp-content/uploads/2020/10/Lancashire-CC-v-G-Unavailability-of-Secure-Accommodation-judgment.pdf>

⁸⁵ <https://www.familylawweek.co.uk/site.aspx?i=ed210997>

accommodation that would take her, although they had approached over 30 institutions. Mrs Justice Judd in her judgement told of her 'significant misgivings' in authorising the placement:

*'The local authority has come to the conclusion that the only possible contingency plan is to place Z in a council home rented, by them, together with four members of staff who are available to care for and contain Z at all times... The proposal is that Z is not allowed out at all, save for appointments when there will be an escort of three staff. Z is to be locked into a bedroom at night, and the house will be locked at all times. Z will be stripped of all loose items, and restrained in the event of attempted self-harm, attempts to harm others, or to escape. All furniture within each room will be secured to the floor or wall. There is no doubt that these are draconian restrictions, and that this can be no more than a holding position until a suitable placement becomes available. There is no provision here for education or therapeutic support, although a plan is to be drawn up in the next four weeks. The local authority does not pretend that this proposal is anything approaching ideal for Z, but they find themselves simply unable to identify any other placement.'*⁸⁶

Dorset vs E

In this case a 16-year-old boy, described as being at risk of killing himself or being killed, was living in an unregistered placement – in this case a private house with 2:1 supervision. The judge stated that he needed a secure placement but *'at the moment no such placements are available as there are simply not enough of them'*. Initially Dorset Council did not apply for a Secure Accommodation Order under Section 25 of the Children Act as they were aware 46 other children were awaiting a place; once they did there was still not a place available.

These court judgements show that many of these children needed a secure children's home, but there were no places available. However, it is more nuanced than simply not enough beds existing. As the cases show, in some instances a child is in a Secure Children's Home, but the home decides that that they are no longer able to provide them with the care they need. Likewise, a Secure Children's Home may have an available place but the manager may decide that they are not able to care for the child being referred while also keeping the other children they care for safe. Our data shows for example that while there were 81 children accommodated in welfare beds in England at the end of February 2020, there were 108 beds listed as 'available'. This shows that it is not just an issue of capacity, but also of the type of capacity needed. Moreover, more could be done to provide high quality flexible alternatives to secure home beds and appropriate step-down care for children who no longer need secure placements, to reduce length of stay in secure homes and free up places for those who need this provision.

Some of those we have spoken to have raised concerns that with so many children waiting to be placed, there are perverse incentives for homes to take the children who pose the least risk rather than those most in need of a secure place. However, home managers we have spoken to have been clear that they have a duty to all the children they care for, and cannot and must not endanger them by taking on children who could put others in their care at risk of harm. Sometimes they may feel they do not have the staffing resource to care for the children seeking a place alongside the children they already care for. The problem seems to be that nobody centrally has collective responsibility for those children who are not yet placed in a home, and who are at risk of coming to harm.

It is also clear that just having more homes on the same model will not address this. Although all the Local Authorities in these cases believe children need secure accommodation, the current model of secure

⁸⁶ <https://www.familylawweek.co.uk/site.aspx?i=ed211969>

provision does not work for all children. Some of these children have been evicted from Secure Children's Homes before. For some children they fluctuate between meeting the criteria for a secure home and failing to meet the criteria. These children need somewhere which can flexibly adapt to their need for security. For some, there are arguments between children's social care and CAMHS teams about where a child 'fits', with neither setting or its guiding legislation quite meeting a child's needs – this leaves a child who falls between settings because they don't fit their criteria, rather than a system adapting to meet the needs of a child.

Conclusions

The long-term ambition should be for no child to be locked up, and this will require much more investment in family support and mental health services that can keep a child safe in a community. For children who come into care it will also require long-term investment in the kind of high quality and specialist fostering and residential care that can meet the needs of the most at-risk children, without having to resort to locking them up. However, we also need a system that can respond to those children who have hit crisis because they have not had this supportive, preventive care, and who therefore need to be deprived of liberty to keep themselves or others safe.

At a very basic level this means knowing exactly how many children are being locked up in one kind of institution or another. It is all very well to say that we have reduced the numbers of children in custody, and that no more children are being locked up on welfare grounds than ten years ago, but if all that has happened is that we are, legally or illegally, locking them up in entirely inappropriate settings, this cannot be counted as a success story. To ensure we have adequate data on all children deprived of liberty in all settings:

- 1. Data must be collected on the number of children being deprived of liberty through the inherent jurisdiction of the High Court and in the Court of Protection, with information about where they are living.**
- 2. The NHS must produce information annually on the number of children living in inpatient wards, by ward type, and the legal basis for this.**
- 3. The Department for Education should provide much fuller data on the children who are referred to, placed, and turned away from Secure Children's Homes, as well as information on the use of restraint, children's ethnicity, length of stay and distance from home.**
- 4. Data should also be published on the use of restraint in all registered children's homes and residential special schools, to monitor its use and help to identify settings where there are high levels of restrictive practice in place.**

The Government should take urgent steps to ensure that all the appropriate protections in are in place for children who are being deprived of liberty, wherever they are living. This would require that:

- 5. All children living on inpatient wards should be entitled to an Independent Mental Health Advocate, even if they are admitted informally.**
- 6. Guidance should urgently be issued on deprivation of liberty across all education and social care settings, including information on how it interacts with regulations around the use of restraint. This must give clarity on the extent to which settings can restrict children's freedom, how that should be reviewed, when a court authorisation needs to be sought and what should be done to reduce the use of restrictive intervention.**
- 7. Data on children deprived of liberty and where they are living must be collected and shared with Ofsted, the Department for Education and the Children's Commissioner. This**

will help to confirm that all settings are in fact registered with Ofsted, and can be inspected and visited to ensure they are respecting children's rights.

- 8. The Secretary of State must be informed whenever a child under 13 is deprived of liberty under the inherent jurisdiction.**
- 9. Consideration should be given as to whether new legislation is required when children are being deprived of liberty in non-secure settings, or if clear guidance and additional safeguards on the use of the inherent jurisdiction is sufficient**

We also need to be much more ambitious about providing the right accommodation and approach for all children who need to be held securely. This research shows that there are a group of children who are at high risk of harm. They may have a range of mental health and safeguarding concerns, and have been involved in offending behaviour. While there has been work going on to ensure different departments work together, these children are currently required to fit into one type of secure accommodation or another – criminal justice, mental health, or welfare. It is particularly concerning, for example, that black children in particular are most likely to end up in the most punitive of these institutions and that boys are more likely to be in custody while girls end up in mental health provision.

And as this research has identified, there are a group of children who fall between the gaps of all settings – ones which no secure home has space for, and no mental health ward thinks meets their criteria. A much more integrated model, which can respond to the needs of children as they emerge, rather than trying to assign them to certain type of institution is required. This model needs to be flexible in the level of freedom children can be given, so children can have a stable placement that adapts to their needs, rather than having to move somewhere new which can accommodate them if they need greater or fewer restrictions.

- 10. The Government should develop a joined up ambitious strategy for a new integrated secure model of care that treats children as children, rather than seeing them as part of the mental health, custodial or welfare system. This must include an urgent increase in capacity in a new model of secure children's homes, which includes flexible, step-down accommodation, and has integrated mental health provision.**
- 11. The Department for Education should invest in more specialist foster and residential care for the most high-needs children, to avoid the need for secure care.**
- 12. The Department for Education should consult on ways to manage admissions to secure children's homes, so the children most in need of a place are prioritised.**



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