Children's COMMISSIONER

Who are they? Where are they?

Children locked up

MAY 2019

Contents

Introduction from the Children's Commissioner, Anne Longfield

At any given time almost fifteen hundred children in England are 'locked up' in secure children's homes, Young Offender Institutions, secure training centres and mental health wards, either for their own safety or the safety of others. These are some of the most vulnerable children in the country who, for whatever reason, we have not been able to help to live freely in their own homes or communities. Locking children up is an extreme form of intervention. Article 5 of the European Convention on Human Rights sets out in what circumstances it is allowed, and the legal protections that should be in place. The Children's Commissioner has a clear responsibility to advocate for these children living in secure settings, sometimes far away from their family, friends and home.

The Youth Justice System detains children in Young Offender Institutions, Secure Training Centres and Secure Children's Homes when they have committed certain crimes. Local Authorities can also place children in Secure Children's Homes in order to keep them safe, and children can be detained under the Mental Health Act in mental health wards if they are suffering from a mental illness and pose a risk to themselves or others[1].

The information on these children is therefore held by the Ministry of Justice, Department for Education, NHS England and Local Authorities, with no single point of access or consistency about exactly what information is gathered. We have combined this data to show that 1,465 children in England were securely detained in March 2018, of whom 873 were in youth justice settings, 505 were detained under the Mental Health Act, and 87 were in secure children's homes for their own welfare.

However, we know that this is not a complete picture. Published NHS England figures cover only about three quarters of mental health settings as not all services provide data, so some children may be missed. Published sources do not provide monthly information on children's ages or how long they stay in NHS secure settings, although they do provide an overview of the age and ethnicity of all children detained over the course of the year. In contrast, the Ministry of Justice provides more detailed information about how long children stay, why they are there and their ages and ethnicities, while the Department for Education also publishes information on children's ages and how long they stay.
None of these departments publish administrative data on a regular basis about the needs of these children, for example, their mental health diagnoses, Special Educational Needs or family problems.

[1] We are also aware that 41 children were detained in immigration centres in 2017, for periods of up to a week, and 1 child was held for up to two weeks. Largely due to the duration of their detention we will not be discussing the issues affecting these children in this report.

There are also children deprived of their liberty who are invisible to us. These are children who do not show up in the published data because they don't fit into any of the categories above, and the legal basis for detention is not set out in any single piece of legislation. There are no publicly available figures about how many of them there are or where they are living. Although this report did find, by requesting data from the courts, that there are at least 211 children who were detained in this way in 2018, we do not have information showing where they live or how long they have been there.

Adding up the cost of the placements for these children is a stark reminder of the price of social failure: we estimate that we spend around £309 million a year on these 1,465 children in England – and this does not even include those 'invisible' children whose settings we don't have information about. However, the amount spent per child varies wildly depending on the setting they are in. A child living in a Medium secure mental health unit is seven times as 'expensive' as a child in a YOI.

There is no doubt that all these children need extremely intensive help, but it is not always clear that they are getting the right help at the right time. The needs of children in different settings are increasingly understood to be quite similar[2], with no clear-cut distinction between children in need of protection and children who have committed crimes.

This report shines a light on all these children behind closed doors, asking who they are and where they are living. It looks at what we know and, crucially, what we don't know about them, so that we can begin to assess whether they are getting the most appropriate support. We must make sure that children do not simply become defined by the institution they happen to be locked up in.

Anne Longfield OBE
Children's Commissioner for England

[2] Warner, L. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 1 – Scoping Analysis,* NHS England

Children Detained in Secure Settings

The following section gives an overview of the different legal grounds of detention for children, the kinds of settings children are detained in, and the numbers of children in them.

Youth Justice Custody

Types of Setting

When children have committed certain serious crimes they can be sentenced to detention in Young Offender Institutions, Secure Training Centres or Secure Children's Homes. Some of the settings described in this section are in Wales; we include them here as children from England can be placed in settings in Wales.

Secure Children's Homes are the smallest and most clearly therapeutic of youth justice settings, with higher staff to child ratios - at around 1:2[3] - than other forms of custody, and housing on average 17 children[4]. They must abide by the Children's Homes Regulations[5], and in addition have to be approved by the Secretary of State for Education in order to hold children securely [6]. They are for children aged 10-17, although for children under 13 approval is required by the Secretary of State for Education. As well as children living there because of their involvement with youth justice, there will also be children placed there for their own welfare by Local Authorities. Partly due to the way the information is published we look at children detained in homes on a youth justice basis in this section, while the next section looks at those placed there on welfare grounds.

[3] Houses of Parliament,(2016). *Education in Youth Custody*, POST Note Number 524

[4] Department for Education, ***Children accommodated in secure children's homes: 31 March 2018***, Table 3

[5]Department for Education (2015), *Guide to the Children's Homes Regulations including the quality standards*

[6] The Children (Secure Accommodation) Regulations 1991, Regulation 3 (as amended by the Children and Social Work Act 2017, Schedule 1)

There are fourteen Secure Children's Homes in England and one in Wales, and according to their latest inspection reports they can house a total of 120 children on Youth Justice grounds; the Youth Custody Service informed us that at January 2019 they could accommodate a total of 107 children . Thirteen are run by Local Authorities, while one (St Catherine's Secure Centre) is run by a charity, and all are inspected by Ofsted twice a year under the Social Care Common Inspection Framework (or by the Care Inspectorate Wales) and are then given an overall rating of 'Outstanding', 'Good', 'Requires Improvement to Be Good' or 'Inadequate'[7]. At the date of their latest inspection, in England two SCHs were judged 'Outstanding', seven were 'Good', four were 'Requires Improvement' and one was 'Inadequate', although their most recent report says they are not currently providing care for children[8].

There are three Secure Training Centres in England – Medway (capacity 67), Oakhill (capacity 80) and Rainsbrook (capacity 76) – which can house children aged between 12 and 17. The staff to child ratios are slightly lower than in Secure Children's Homes – at around 3:8[9]. They were introduced in 1994, and were quite controversial from the beginning, with some - including the then Chief Inspector of Prisons - opposed to their creation, arguing that they were not appropriate places for children[10]. The legislation made provision for these centres to be run publicly or to be contracted out; currently Oakhill and Rainsbrook are run privately while Medway is run by the Youth Custody Service. They are inspected by Ofsted in conjunction with Her Majesty's Inspectorate of Prisons and the Care Quality Commission. All three STCs were rated 'Requires Improvement' at their latest inspection[11].

Young Offender Institutions were created in 1988, and are for boys aged 15 to 21, although children 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. As the table below shows, YOIs are the largest type of youth custody setting, and they also have the highest staff to child ratios at 1:10[12]. There are five Young Offender Institutions in England and Wales that can hold children under 18, although Wetherby also houses the Keppel Unit a: '*specialist facility within the overall prison that is designed to hold and manage some of the most vulnerable and challenging young people held anywhere in the country*'[13]. All Young Offender Institutions which hold under 18s are run by the Youth Custody Service, except Parc in Wales which is run by G4S and is also the only prison to hold adults, young adults and children.

They are inspected by Her Majesty's Inspectorate of Prisons, although the CQC inspects the health provision and Ofsted inspects the educational provision. They are judged against four criteria – Safety, Respect, Purposeful Activity and Resettlement – and can be judged 'Good', 'Reasonably Good', 'Not Sufficiently Good' or 'Poor'. As the table below shows, no Young Offender Institution received a 'Poor' judgement in any category, but nor was any judged as

[7] Ofsted, (2019), *Social care common inspection framework (SCCIF): secure children's homes*
[8] Information taken from Ofsted reports; reports are published without the names of the home for safeguarding reasons – the reports were found using Ofsted's management information for 2017/18
[9] Houses of Parliament,(2016). *Education in Youth Custody*, POST Note Number 524
[10] Lord Ramsbotham, House of Lords Debate, 8 March 2006, c813
[11] Latest reports found at: www.justiceinspectorates.gov.uk
[12] Houses of Parliament,(2016). *Education in Youth Custody*, POST Note Number 524
[13] HM Chief Inspector of Prisons (March 2018), *HMYOI Wetherby and Keppel*

Good across the board. The most highly rated was the Keppel Unit which is the most specialised provision.

	Safety	Respect	Purposeful Activity	Resettlement	Operational Capacity
Cookham Wood	Not Sufficiently Good	Reasonably Good	Not Sufficiently Good	Not Sufficiently Good	188
Feltham	Reasonably Good	Reasonably Good	Not Sufficiently Good	Reasonably Good	180 (and 370 young adults)
Parc	Reasonably Good	Good	Good	Reasonably Good	60 (and 1,663 adults and young adults)
Werrington	Reasonably Good	Good	Reasonably Good	Good	128
Wetherby	Not Sufficiently Good	Reasonably Good	Reasonably Good	Good	288
Wetherby – Keppel Unit	Good	Good	Reasonably Good	Good	48

Figure 1: HMIP ratings of Young Offenders Institutions

The Charlie Taylor review of the youth justice system[14] recommended that instead of the current custodial settings, there should be a system of Secure Schools which would have a greater emphasis on education and rehabilitation. These schools will be for children who would currently go to Secure Training Centres or Young Offender Institutions, and are intended to be similar in style to residential special schools or Secure Children's Homes rather than simply being 'prisons with education'[15]. They will be led by headteachers, who will be expected to recruit a workforce who specialise in working with children with complex needs. The government has committed to piloting two secure schools, and the first of these will be opened in Autumn 2020 as a redevelopment of the Medway Secure Training Centre. We await the announcement of the second site.

Legal Basis for Detention

Sentencing guidelines make it clear that children should only be given custodial sentences as a matter of last resort, when the serious nature of their crime requires it. The most commonly used sentence is a Detention and Training Order, which allows for children aged over 12 to be detained for up to 2 years, although guidelines say that for children aged between 12 and 14 they should only be used for persistent offenders[16]. It is expected that usually the length of sentence will be shorter than the adult equivalent for the same crime, and shorter still for younger children.

[14] Taylor, C (2016), *Review of the Youth Justice System in England and Wales*, Ministry of Justice
[15] Ministry of Justice, (2018), *Secure Schools Vision*
[16] Sentencing Council, (2017). *Sentencing Children and Young People Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery Definitive Guideline*

Children aged 10-17 can also be sentenced under Section 91 of the Powers of Criminal Courts (Sentencing Act) 2000 if they have committed crimes for which an adult would be sentenced to more than 14 years in prison (such as manslaughter and grievous bodily harm) and sexual assault offences. If a child or young person is deemed a dangerous offender they can be sentenced for either extended detention – up to 5 years for violent offences, and up to 8 years for sexual offences – or indeterminate detention under section 226 of the Criminal Justice Act 2003. Finally, the mandatory sentence for any child found guilty of committing murder, or other crimes which carry a life sentence for adults, must be detention at Her Majesty's Pleasure under Section 90 of the Powers of Criminal Courts (Sentencing Act) 2000.

In addition to being sentenced to custody after committing a crime, children can also be remanded into custody whilst they await trial if they are over 12. Depending on their age they will be remanded into Secure Children's Homes, Secure Training Centres or Young Offender Institutions if they have committed a serious crime or are likely to abscond[17]. Children aged 10 to 12 can only be remanded to Local Authority accommodation, which can include Secure Children's Homes[18].

Costs of Settings

Secure Children's Homes are the most expensive form of provision, 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.[19]In order to get a rough estimate of how much we spend per year on detaining children in these kinds of settings, we used the figures for children detained in England on youth justice grounds (these are the numbers as at March 2018, and are all detailed below) and multiplied it by the cost. Of course, the population will not be consistent throughout the year, so this is just a rough estimate, but suggests that it would cost £99,350,000 a year to detain the children in all these settings. This also assumes that the annual cost is the cost per child, and does not take into account any cost for beds that are not filled over the course of the year

[17] Ministry of Justice, (2012). *Legal Aid, Sentencing And Punishment Of Offenders Act 2012: The New Youth Remand Framework And Amendments To Adult Remand Provisions*

[18] Any child detained on remand will have the status of a Looked After Child, while this is not the case for those who have been sentenced. If a child is 'Looked After' then their home Local Authority has a responsibility to ensure the care they are provided with is sufficient, and they will have a designated Social Worker. If they have been 'Looked After' for at least 13 weeks since the age of 14 they will then be entitled to certain support and services for children leaving care.

[19] Dr Phillip Lee, *Youth Custody: Costs: Written question - 144303*

Number of Children Detained in Youth Justice Settings

	Latest Figure, January 2019	March 2018
Secure Children's Homes	71 *(and 2 in Wales)*	99 *(and 6 in Wales)*
Secure Training Centres	144	169
Young Offender Institutions	574 *(and 29 in Wales)*	605 *(and 43 in Wales)*
Total:	781 *(and 31 in Wales)*[20]	873 *(and 49 in Wales)*

Table 1: number of children detained in youth justice settings

The Ministry of Justice provides monthly information on the number of children detained in each type of youth custody setting. Above we look at the latest figures as well as the numbers for March 2018 in order to get a comparable annual total for detained children, as some information about other secure settings covered later in the report is only available for March each year[21].

In January 2019 the statistics show that 280 (34%) children were detained on Detention and Training Orders. There were 245 (30%) children under s91 of the Powers of Criminal Courts (Sentencing) Act 2000, 232 (29%) on remand, and 55 (7%) on other orders (which would include those sentenced to extended stays or life).

The total number of children detained in custody has decreased steadily over the past ten years, from 2,726 at the end of January 2009 to 812 at the end of January 2019. The most significant reductions have been in custodial sentences for those convicted of less serious crimes – the number of children in custody on a Detention and Training Order has gone down by 79% whereas the numbers on s91 sentences has gone down by 29%. It appears the rate of decrease has slowed, and between January 2017 and January 2018 there was in fact a slight increase, although it has since gone down again. The chart below shows that the biggest decrease has been in YOIs – where the population has reduced by 74% - followed by SCHs at 60% and STCs at 37%.

It is however still the case that more children are detained on justice grounds than on welfare or mental health grounds combined, and that many countries who take a more welfare-based approach have far lower numbers of children in custody. For example, the figures for 2015 show that there were only 13 children aged 15-17 in prison in Sweden, Norway, Iceland, Finland and Denmark combined, although the definition of 'prison' can of course vary between different countries[22]. For Denmark, this means a rate of 0.29 15-17 year olds in

[20] For the total figures in this report we do not include children living in institutions in Wales. Analysis of the legal basis and length or stay will include these children, as it is not possible to separate them from children living in England in those figures.

[21] Her Majesty's Prison and Probation Service, *Youth Custody Report: January 2019*, Table 2.4. There is a difference of 3 between these numbers and the numbers produced by DfE on children held on youth justice grounds, likely due to the DfE including over 18s.

[22] Kristoffersen, R. (2016), *Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden 2011 – 2015*, Kriminalomsorgen, Norway

custody per 10,000[23]. Scotland also takes more of a welfare-based approach, and have 4.26 16 and 17 year olds in custody per 10,000, compared to 5.87 in England and Wales[24].

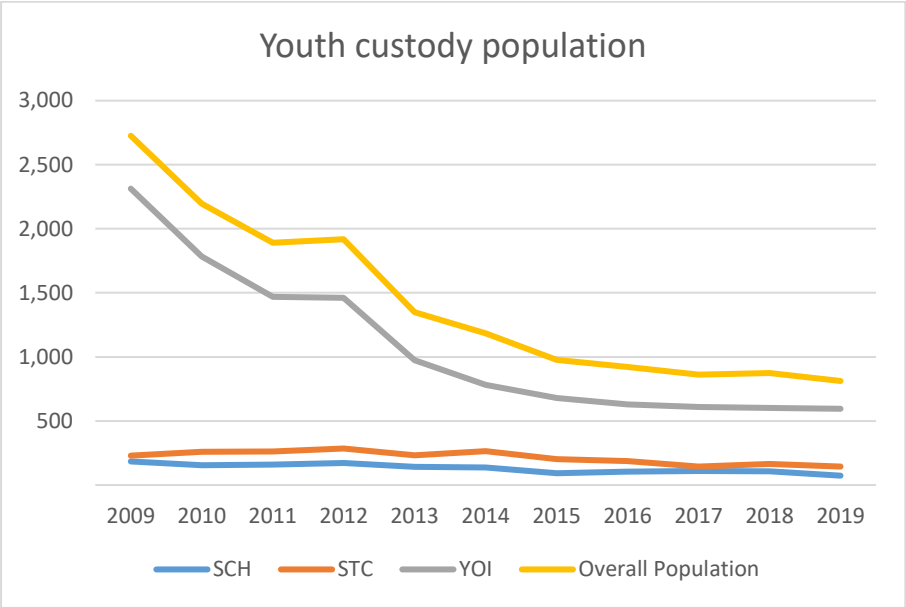

Figure 2: youth custody population at January

Welfare Placements

Children can be placed in Secure Children's Homes as they await a trial or after sentencing, as described above, but they can also be placed there by Local Authorities on welfare grounds. These are the children we focus on in this section.

For a child to be placed in a Secure Children's Home, they need to be a Looked After Child[25], or to be accommodated by health or education authorities. In some circumstances a Local Authority might apply for a care order at the same time as seeking a s25 placement[26]. The Local Authority needs to be able to show that they have a history of running away from other placements, and that they are likely to suffer significant harm if they do run away, or that they are likely to injure themselves or others if they are kept in any other kind of accommodation. Local Authorities might use this kind of accommodation if they think a child is at risk of Child Sexual Exploitation or being criminally exploited[27]. In order to then place a child in a Secure

[23] Using population figures for 15-17 year olds taken from Statistics Denmark, FOLK1A for 2015 Q4

[24] Authors calculations using mid-June England and Wales custody statistics and Scotland http://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx and mid-year 2017 population estimates

[25] Except in some exceptional circumstances, for example this case shows where a 17 year old girl who was not looked after was placed in a SCH: *Re B (Secure accommodation: Inherent jurisdiction) (No. 1) [2013] EWHC 4654 (Fam)*. Children can be Looked After either under s31 of the Children Act 1989, or under s20(3).

[26] Secure Children's Homes and Hampshire County Council, (2019), *Secure Welfare Coordination Unit Annual Report*, available at: http://www.securechildrenshomes.org.uk/secure-welfare-coordination-unit-2018-data/

[27] Hart, D. and La Valle, I., (2016) *Local authority use of secure placements*, Department for Education

Children's Home they will need to go to court and seek a Secure Accommodation Order, under Section 25 of the Children Act, which allows them to do so. In emergency circumstances a local authority can approve a secure placement for up to 72 hours in any 28-day period, without court approval. The court can authorise a Secure Accommodation Order for a maximum of three months the first time it is applied for and can then extend it for up to six months on subsequent applications.

A Secure Accommodation Order can only be made to a secure setting which has been approved by the Secretary of State for Education to detain children. Later in the report we will examine what happens when there are no available spaces for a child who needs placing in a Secure Children's Home.

We would expect all children in Secure Children's Homes on welfare grounds to be there under Section 25 of the Children Act, although in some exceptional circumstances this does not happen, and courts will place them there using other powers to act in the best interests of a child[28].

Out of the fifteen Secure Children's Homes in England and Wales, seven only take children placed there on welfare grounds (although one is not currently providing any care), and six accept children on both welfare and youth justice grounds. Two homes only take children on youth justice grounds, although Local Authorities can purchase spaces there if needed[29]. According to their latest Ofsted reports there are a total of 135 welfare beds which have been approved. However, the Department for Education reports that at 31st March 2018 only 100 of these are actually available to be used[30]. This might be because places are closed for refurbishment, or because they do not have enough staff to operate at full capacity[31]. Sometimes, homes will not accept a child if they think that doing so would place them or another child in the home at risk for any reason.

If we use the estimated cost of £210,000 a year for a bed in a Secure Children's Homes, we can see that it would cost roughly £18,270,000 a year to detain the number of children living in Secure Children's Homes on welfare grounds (as at March 2018, see figures below). As with the above costs for children on youth justice grounds, this is an estimate as it assumes the population remains consistent across the year. This also assumes that the £210,000 is the cost per child, and does not take into account any cost for beds that are not filled over the course of the year.

Number of Children Detained on Welfare Grounds

31st March 2018 snapshot figure for children detained on welfare grounds: ***87 (and 9 in Wales)***

The Department for Education produces annual statistics on children in Secure Children's Homes – this includes information on both children detained on welfare grounds and those detained under the Youth Justice System, while the monthly Ministry of Justice figures only

[28]For example, there are cases where a 17 year old is placed in secure accommodation through the inherent jurisdiction of the court, rather than by s25: *Re B (Secure accommodation: Inherent jurisdiction) (No. 1) [2013] EWHC 4654 (Fam)*.

[29] Information taken from latest Ofsted reports for Secure Children's Homes

[30] Department for Education, ***Children accommodated in secure children's homes: 31 March 2018,*** Table 2

[31] Clark, D. (2019). *Atkinson Unit facing financial pressures as low occupancy rates are 'not sustainable',* Devon Live

cover those detained on youth justice grounds[32]. The snapshot figure for March 2018 provided by DfE for children detained on welfare grounds was 96, 9 of whom were in Wales[33]. The figures include those aged over 18, although the figure is not published (for confidentiality reasons) as it is under 5 – we make the assumption that all these children are there on youth justice grounds[34].The numbers of children detained in SCHs on Welfare Grounds varied over the past 10 years (ranging between 60 and just over 100) but without a clear pattern of increase or decline – the figure is 2018 is the same as it was in 2010 - although as we saw above the number held on youth justice grounds has more than halved over the same period.

Children Detained under the Mental Health Act 1983

Legal Basis for Detention

The Mental Health Act is the legislation which should be used to detain children securely on psychiatric wards. In order to detain anyone under the Act, it is necessary to show that they are suffering from a mental disorder which needs hospital treatment or assessment and that without this they pose a risk to their own safety or that of others. Section 2 of the Act allows someone to be detained for up to 28 days for assessment, and Section 3 allows for them to be detained for up to 6 months for treatment. For a child to be 'sectioned' they should be seen by an Approved Mental Health Professional (who is usually, but not always, a social worker) and two psychiatrists - one of whom should have a specialism in child mental health. In an emergency, patients can be detained for up to 72 hours under Section 4 if only one doctor is available [35].

Another commonly used section of the Act is s136, which allows for a police officer to take someone to, or detain them in, a place of safety for up to 24 hours if they appear to be suffering from a mental disorder and in need of care or control. There are also several Sections of the Act which are known as 'forensic sections', because they relate to those involved with the criminal justice system. These allow for a court to send someone to hospital for assessment or treatment before trial, to send someone to hospital instead of to prison, or to be transferred from prison to hospital.

It is also possible for children to be on mental health wards on an 'informal' basis, where they or their parents have consented to them being there. These children are not included in the NHS statistics below, and so we consider them further in our 'Invisible Children' chapter.

Types of Setting

There are several kinds of mental health wards which only accept children who have been detained under the Mental Health Act:

- Psychiatric Intensive Care Units (which should be used for no more than 8 weeks at a

[32] Department for Education, *Children accommodated in secure children's homes: 31 March 2018*
[33] DfE Statistics show 15 children were held in Hilllside SCH in Wales, and Youth Custody informed us 6 of these were there on youth justice grounds; we assume therefore that the remaining 9 were there on welfare grounds.
[34] There are 3 more people in the DfE's youth justice figures than in the MoJ's, so we have assumed that these are those aged over 18. This means these figures are only an estimate.
[35] Department of Health, *Mental Health Act 1983: Code of Practice*

time for those experiencing short term behavioural disturbance or for those being assessed before moving to a long-term unit or returning home)[36]

- 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).

Children can also be detained under the Mental Health Act in general adolescent in-patient wards, alongside children who are not subject to the act. General wards should have high dependency areas where children with higher levels of need can be cared for, and children in these areas should usually be detained under the Mental Health Act[37].

The Royal College of Psychiatrists recommend a ward staff to child ratio of at least 1:1 for the most high-need children, and 1:2 when they are described as 'medium dependency' – needing checks every ten minutes.[38] A recent report found that secure mental health settings had an average staff to child ratio of between 1:1 and 1:2[39].

We do not have data on which of these wards (PICU, low or medium secure, or general) children are detained. Although children should be detained on dedicated children's wards, we know that between July and September 2018 there were 37 children admitted to adult mental health in-patient wards, although we do not have a breakdown of whether any of these were secure wards[40].

There is not a comprehensive list of all the secure units in England that is publicly available. Researchers who undertook a census of all children in secure settings in September 2016 were given a list of units by NHS England, but found three additional secure units through their own searching[41]. In total they found 28 secure hospital units in England, of which 16 were run by independent providers and 12 were run by the NHS.

NHS England has provided us with its current list, including a detailed breakdown of the specialism, unit type and number of beds for children in these units across England, which is published in Appendix A. This showed that there were (at 22nd March 2019) 138 PICU beds in 11 wards, 146 Low Secure beds in 11 wards and 71 Medium Secure beds in 7 wards. This totals 355 beds in England (there are an additional 13 low secure beds in Wales), which is significantly lower than the latest figures available for children detained under the Mental Health Act (discussed below) at any given time.

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[36] National Association of Psychiatric Intensive Care and Low Secure Units, (2014), *National Minimum Standards for Psychiatric Intensive Care in General Adult Services*

[37] NHS England, *Service Specification No: 170022/S, Child and Adolescent Mental Health Services Tier 4 (CAMHS T4): General Adolescent Services including specialist eating disorder services*

[38] Thompson, P. and Clarke, H., *Quality Network for Inpatient CAMHS, Service Standards, Eight Edition*, Royal College of Psychiatrists

[39] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England

[40] NHS England, *Mental Health Five Year Forward View Dashboard Q2 2018/19*

[41] Warner, L. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 1 – Scoping Analysis,* NHS England

All mental health provision is inspected by the Care Quality Commission, and can be graded 'Outstanding', 'Good', 'Requires Improvement' or 'Inadequate'. The majority of beds – 220 – are in settings graded Good or Outstanding, while 108 are in settings graded Requires Improvement. Twenty-seven are in units which are yet to be inspected. There are no open units rated Inadequate – the Priory in High Wycombe was rated Inadequate in January 2019 and has since closed. We did not find any significant difference in quality based on whether services were provided by the NHS or private providers. One difference that we are aware of is that private providers are less likely to send complete data returns to NHS England than NHS providers, although the reports for the last year suggest that all providers of secure care for children did return data[42].

Cost of Settings

The NHS reference figures for costs suggest that a Medium Secure bed costs £1,611 a day, a Low secure bed costs £1,308 a day and a PICU bed costs £1,327 a day[43]. We know that some children will also be detained on other wards such as general wards or eating disorder wards. For the purpose of this calculation we assume that all children not on secure wards are in general wards, which cost £716 a day (although the cost of a detained child would probably be higher due to higher staff supervision required). However, these reference cost figures only contain information from 5.5% of mental health providers, so should be treated with caution[44].

We use the March 2018 figure for children detained – a total of 505 - to estimate how many children would be in each type of bed. The NHS Benchmarking data shows that the average occupancy rate for CAMHS Secure beds was 70%, so if we apply that rate to all the secure beds we can estimate that of the 505 children detained at March 2018 102 children would be in Low Secure, 50 in Medium Secure, 96 in PICU and the remaining 257 children would be in general wards[45]. We can see that the cost per year, assuming this distribution, would be roughly £191,760,000. Of course, this can only be a rough estimate as it assumes that the number of children detained stays consistent throughout the year, and that the distribution we have assumed is correct. It is also based on the numbers of children detained reported by NHS England, which we know do not cover every setting.

It is worth noting that there are other estimates for the cost of a CAMHS in-patient bed, although these do not break down into secure/non-secure. NHS Benchmarking showed that the annual cost for an in-patient CAMHS bed was £230,000 a year, although this was just for general beds (excluding secure and eating disorder beds) and covered all of the UK[46]. That would equate to £630 a day, slightly lower than the £716 from NHS Improvement figures.

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[42] Community and Mental Health Analysis Team, NHS Digital, (2018). *Mental Health Act Statistics, Annual Figures: Summary Report, 2017-18,* NHS Digital (2019), *MHSDS Submission Report March 2019*

[43] NHS Improvement, (2018), *National Schedule of Reference Costs 2017/18*. NHS England report that the actual contracted costs are lower than these, although we do not have information on contracted costs.

[44] Correspondence with NHS Improvement for this report

[45] NHS Benchmarking Network – CAMHS 2018 Key Findings

[46] NHS Benchmarking Network – CAMHS 2018 Key Findings shows a cost of £2.3million per 10 beds per year

Number of Children Detained under the Mental Health Act

	Latest Figures, December 2018	March 2018
Children Subject to the Act	467	535
Children subject to Community Treatment Orders/conditional discharge[47]	17	14
Children taken to hospital as place of safety under s136	19	16
Children detained in hospital	**440**	**505**

Table 2: number of children detailed under the Mental Health Act

NHS Digital produces Mental Health Services Monthly statistics, which include the number of children who are subject to the Mental Health Act at the end of the month, and the number of children who are detained in hospital[48]. They say that all the figures are likely to be underestimates, as not all providers complete their return (and that this is particularly true for private providers), although the latest report suggests all providers of secure settings for children did complete the return[49]. In September 2018 (the last time they reported the data coverage figure), NHS Digital reported only around 75% of the expected organisations providing services for children and young people completed the return[50].

The NHS does not publish statistics on which section of the Mental Health Act children are detained under, although when this data was requested by the CQC in 2015/16 it showed that only about 2% of children were detained under forensic sections, while 39% were there under s2 (for assessment) and 59% were under s3 (for treatment)[51].

It is very difficult to track the changes in mental health detentions of children over time, as the current data set only goes back to January 2016, and no figures are available for before that. The chart below shows the number of children detained at the end of each month, but it is worth noting that between January and December 2016 the coverage of providers increased from just under half to around three-quarters, so much of the increase may just be due to increased reporting rather than a true increase in children detained. Due to the incomplete nature of the reporting it is hard to tell if the dramatic increase between

[47] These will be children subject to the act who are being treated in the community; those on conditional discharge will have been detained under a forensic section of the act.
[48] NHS Digital, (2019), *Mental Health Services Monthly Statistics - Final December, Provisional January 2018*
[49] NHS Digital, (2019), *Mental Health Services Monthly Statistics - Final March, Provisional April 2018*
[50] NHS Digital, (2018), *MHSDS Monthly: Final September 2018 Executive Summary*
[51] Care Quality Commission, (2016), *Monitoring the Mental Health Act in 2015/16*

December 2017 and January 2018 reflects a true increase or an improvement in data coverage[52].

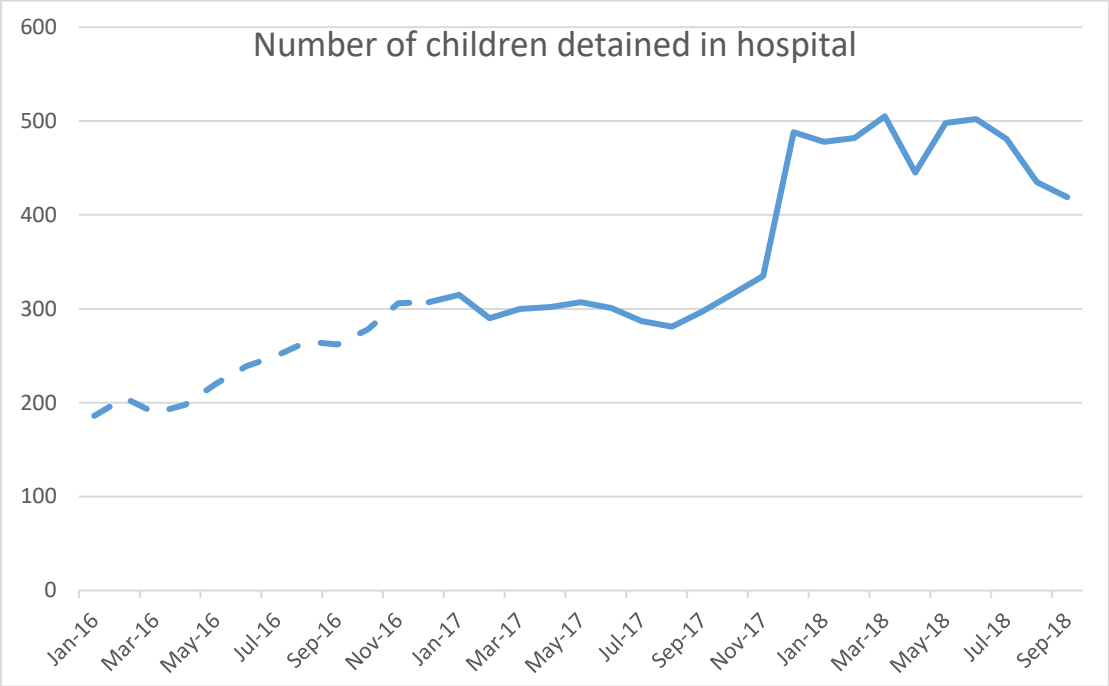

Figure 3: number of children detailed in hospital

The police also produce annual figures for the number of children detained in police stations under s136 of the Mental Health Act[53]. Although this practice was banned in 2017 their figures show that 10 children in 2017/18 were still held in police stations under this section[54].

[52] The data quality report which accompanies these statistics does not show any providers who supplied data in January 2018 who had never done so before, so this cannot be explained by a new provider supplying data.

[53] The police can use s136 of the Mental Health Act to take people to a place of safety and detain them for assessment for up to 24 hours.

[54] Home Office, *Police powers and procedures, England and Wales, year ending 31 March 2018*

Comparisons between children in secure settings

In this section we compare demographic characteristics of children in secure settings, to better understand whether some children are more likely to end up in certain types of settings. Unless stated otherwise, the figures are for March 2018, as that is where there is the most information available across all secure settings to allow for better comparison.

Age

The data shows us that older children, aged 16 and 17, are the most likely to be detained in any kind of secure setting. In youth justice custody, 81% (749) of children are aged 16 or 17[55], and 68% (637) of children detained under the Mental Health Act in 2017/18 were 16 or 17[56]. We do not have the snapshot figures for the ages of children detained under the Mental Health Act at any one time. The picture is different when we look at children detained on welfare grounds, of whom 58% (56) of children were *under* 16.

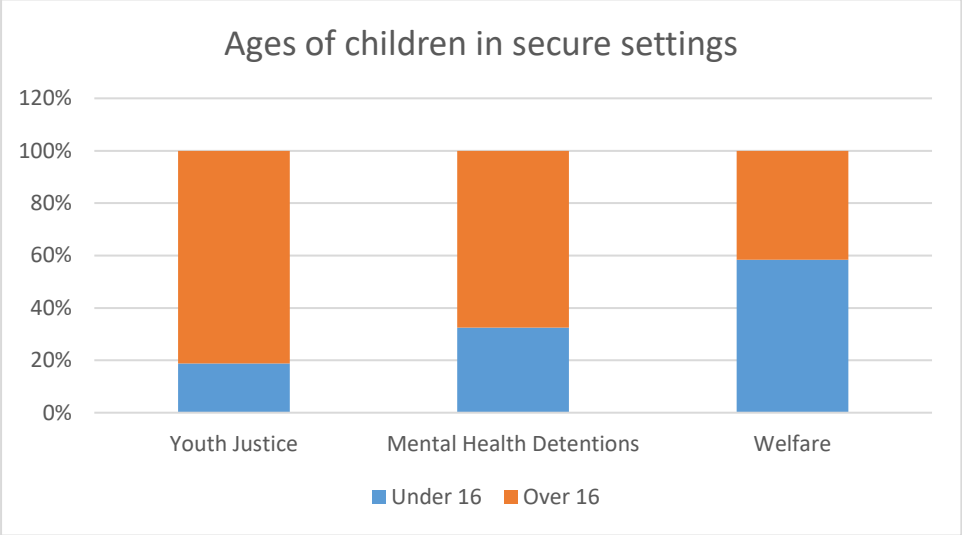

Figure 4: ages of children in secure settings

The youth custody data also allows us to examine the ages of children in the different kinds of youth justice settings, and as the chart below shows, older children in these settings are much more likely to be detained in Young Offender Institutions or Secure Training Centres than younger children[57]. For Young Offender Institutions this is of course largely because they will only accept children aged 15 or older[58].

[55] Her Majesty's Prison and Probation Service, (2019), *Youth custody data: January 2019*, Underlying data

[56] NHS Digital, (2018), *Mental Health Act Statistics, Annual Figures 2017-18,* Table 6

[58] Youth Justice Board and Ministry of Justice, (2017), *Key Characteristics of Admissions to Youth Custody April 2014 to March 2016*

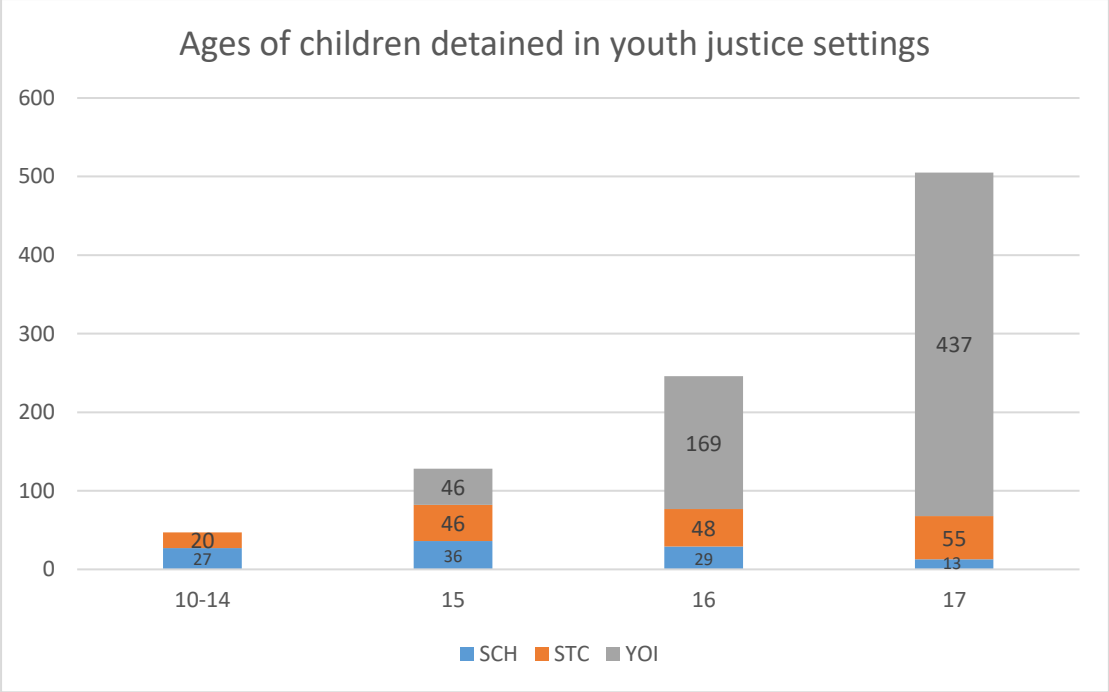

Figure 5: ages of children detained in youth justice settings

The Department for Education does not publish data on the age breakdown of children detained on welfare grounds in Secure Children Homes, although we can estimate it by combining their data with Ministry of Justice data[59]. As the chart below shows, there are more children detained at a younger age on welfare grounds than on youth justice grounds.

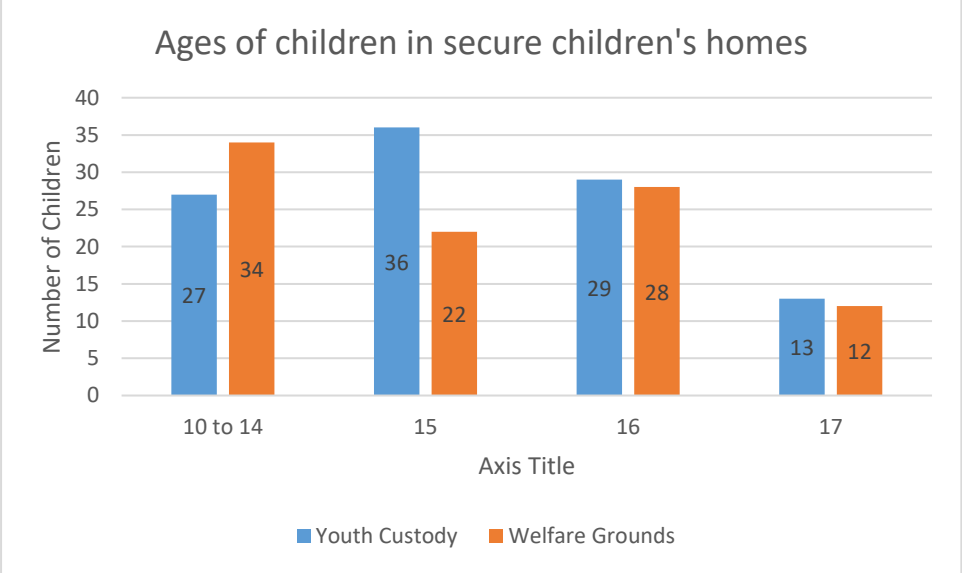

Figure 6: ages of children in secure children's homes

[59] Department for Education, *Children accommodated in secure children's homes: 31 March 2018* Numbers are not exact as the DfE does not publish figures for those aged 12 (for confidentiality reasons), and the surveys are done on different dates.

The only published age data for children detained for mental health reasons is on the age of children sectioned under the Mental Health Act during the course of a year, where children are grouped into '15 and under' and '16 and 17'. This shows that 306 (32%) children under 15 and 637 (68%) children aged 16 and 17 were detained in 2017/18[60]. The monthly snapshot data does not break the numbers down by age band.

Gender

There are some quite clear differences between services when it comes to gender. Boys are much more likely than girls to be detained in the youth justice system, while girls are more likely to be detained on mental health or welfare grounds

Overall, 97% of those in youth custody were boys – and this holds true across age groups. If we look at the figures by institution type, there is a clear difference in where boys and girls end up as YOIs do not accept girls, while 73% of boys in custody are in YOIs. However there does not seem to be a difference in their chances of ending up in SCHs or STCs. 39% of girls in custody were in SCHs while 61% were in STCs; of boys in SCHs and STCs 38% were in SCHs and 62% were in STCs.

On the other hand, girls appear slightly more likely to be detained on welfare grounds than boys; while only 33% of those in Secure Children's Homes are girls, 56% of those there on welfare grounds are girls. This figure is not published so we have had to estimate it by combining information from different sources[61].

Girls are also more likely to be detained under the Mental Health Act than boys - 66% (746) of all the detentions of children which happened in 2017/18 were of girls[62]. The NHS does not publish figures on the number of girls and boys detained at any one time, but a recent NHS report shows that 65% (299) of those detained on a given day were female and 35% (107) were male[63].

If we look at the Annual Mental Health Act Statistics, we can see that there is a marked difference between adults and children when it comes to this gender gap. They show that 69% of detentions of under 15s are of girls, 64% of those aged 16 to 17 are of girls, but only 42% of those aged 18-34 are of women.

It is interesting to note that the most recent comprehensive study of the mental health of children in England shows that under the age of 16 boys are more likely than girls to have a diagnosable mental health disorder, although this changes dramatically after the age of 16

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[60] NHS Digital, (2018), *Mental Health Act Statistics, Annual Figures 2017-18,* Table 6

[61] As with age, the DfE does not publish the gender breakdown of those detained on welfare grounds; again this is an estimate based on combining the MoJ and DfE figures which will not be exact as the DfE figures includes children over 18.

[62] NHS Digital, (2018), *Mental Health Act Statistics, Annual Figures 2017-18,* Table 1e

[63] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS EnglandFigure 3 Note that response rates for different questions in the census differ, so total numbers will differ.

when girls are much more likely to have a disorder[64]. However, girls are more likely to have emotional disorders while boys are more likely to have behavioural disorders, which may go some way towards explaining why they end up in different settings.

Ethnicity

Looking across all secure settings, the most concerning figures appear in the youth justice system, where Black children are significantly over-represented[65].

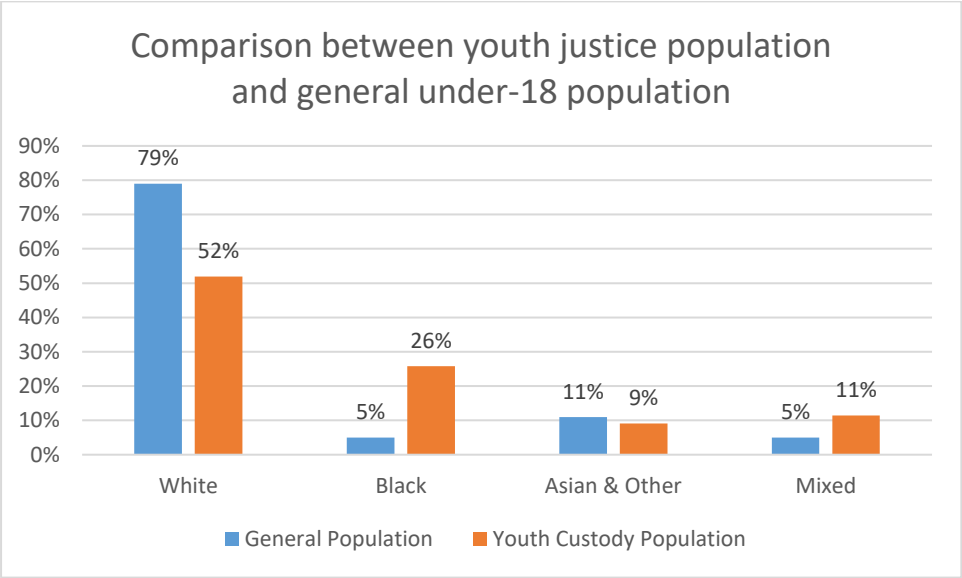

Figure 7: comparison between youth justice population and general under-19 populations

When the figures are separated by institution type they are only published for BAME children as a whole group, rather than for individual ethnic groups. The chart below shows that BAME children appear to be more likely to end up in more punitive institutions – 79% of BAME children in youth custody are in YOIs, compared to 62% of White children.

[64] Sadler, K. et al(2018), Mental Health of Children and Young People in England, 2017, NHS Digital

[65] Her Majesty's Prison and Probation Service, (2019), *Youth custody data: January 2019* and 2011 Census figured

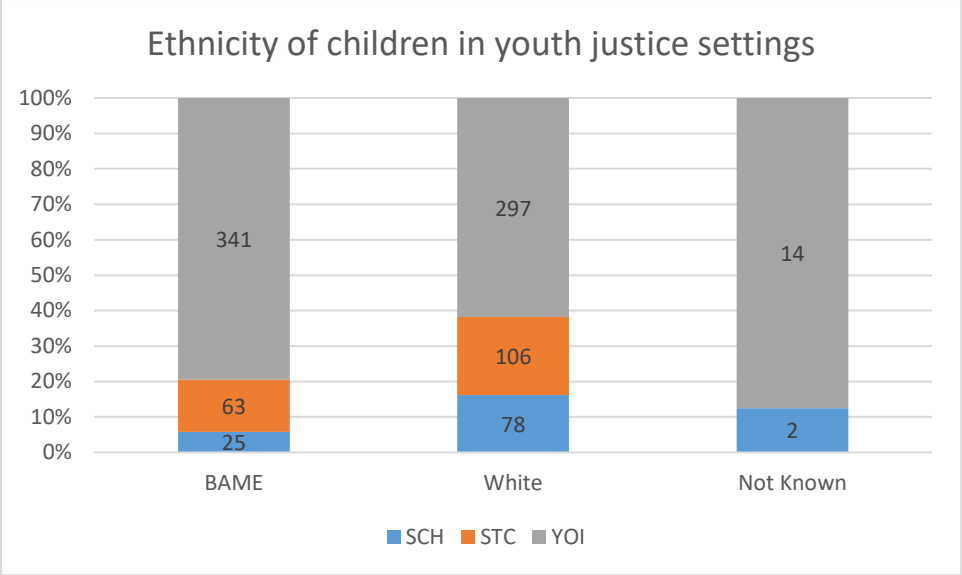

Figure 8: ethnicity of children in youth justice settings

This is not a case of BAME children being older (and so more likely to go to YOIs) upon detention, as it appears to be the case when we break the figures down by age group as well. For example, 65% of BAME 10-14 year olds end up in STCs rather than SCHs, while this is only true for 33% of White children of the same age[66]. Only 29% of White 15-year olds go to YOIs, compared to 45% of BAME 15-year olds. In addition, once they are in custody BAME children are more likely to report that they have been physically restrained, with 65% of BAME children reporting this compared to 51% of White children[67].

It is also concerning that a higher proportion of BAME children compared to White children in custody were there on remand – 34% compared to 27%. Whilst we know that BAME children are more likely to be in custody for violence against the person offences[68], and that decisions about remand into custody are in part based on the seriousness of an offence[69], it is worrying that BAME children who could be innocent of a crime are more likely to be in custody. This is particularly concerning when we consider that some children stay in custody on remand for as long as nine months.

It is unfortunate that the DfE annual statistics on SCHs do not include information on ethnicity. The annual Children Looked After in England statistics do have information on ethnicity and placement type for all looked after children, although these are not cross-tabulated by setting type[70]. A recent NHS survey shows 79% of children detained for welfare reasons (and therefore presumably held in SHCs) were White, 9% were Black and 12% were Mixed/Other[71].

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[66] The numbers of children detained at these ages are quite small so these figures should be treated with some caution.

[67] HMIP, (2019), *Children in Custody 2017–18*

[68] Ministry of Justice, (2018), ***Percentage of young people in custody by ethnicity and type of legal basis over time***

[69] Ministry of Justice, (2012). *Legal Aid, Sentencing And Punishment Of Offenders Act 2012: The New Youth Remand Framework And Amendments To Adult Remand Provisions*

[70] Department for Education, (2018), *Children looked after in England including adoption: 2017 to 2018*

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

It is surprising that this survey found no children from an Asian background were detained on welfare grounds, and the study did not suggest reasons for this.

When it comes to Mental Health Act detentions, it seems that the demographics mirror the general population quite closely. The Mental Health Act Statistics show that for 2017/18, 78% (810) of all detentions in the year were of White children, 5% (55) were of Mixed children, 7% (74) were of Asian children, 8% (79) were of Black children and 2% (26) were of 'Other' children, which is largely similar to the 2011 Census figures for this age group.

We do not have NHS statistics on the ethnicity of children detained on a given day, although figures in a recent one-off report show that of those detained on wards on a given day under the MHA 65% were White, 17% were Black, 13% were Mixed/Other and 5% were Asian. It is interesting that there is such a difference between the overall figures for detentions of children over the year and the numbers detained on a given day.

None of the secure settings publish information about the number of Gypsy, Roma or Traveller children detained, which is concerning as it appears they may be disproportionately likely to face imprisonment. Her Majesty's Inspectorate of Prisons carries out a survey every year in STCs and YOIs , and although the coverage is not complete (82% of children detained on the day of the survey completed it), it does not take place in SCHs and is based purely on children's self-reporting, it is one of the most comprehensive sources of information about children in these settings. It found that 10% of children they surveyed said they were from a Gypsy, Roma or Traveller background, when only 0.2% of the under 18 population in the 2011 Census identified as Gypsy or Irish traveller[72] . The report also says that these children are much more likely to report that they do not feel safe[73].

Missing demographic information

There are some characteristics of children which are not included in any of these government statistics – for example children's religious identity, sexual orientation, socio-economic background, parental status or gender identity. Some survey data gives us information about these groups - the HMIP survey about children in custody, for example, which shows 8% of boys in YOIs report that they have children and that 23% of boys in YOIs were Muslim[74]. However, there are no regularly produced administrative statistics which allow us to be certain about these characteristics across the board.

[72] HMIP, (2018), *Children in Custody 2017–18*
[73] ibid
[74] ibid

Pathway through Secure Settings

This chapter explores what we know about what has happened to children before they enter a secure setting, how they get into a secure setting, how long they stay once they are there, and where they go on to next.

Identified Needs and Engagement with Other Services

Children's Social Care

For children in custody we have several sources of information which suggest that between 30 and 40% of children had been in care[75]. Unfortunately, none of these show whether this was before they entered custody, or as a result of being remanded into custody (when you automatically become a Looked After Child) so are of limited use for understanding previous involvement of services or level of need. Interestingly, BAME children in YOIs were less likely than White children to report that they had been in care (34% compared to 45%), while girls in STCs were much more likely to have been in care – 88% compared to 43% of boys[76]. This could reflect that there are different perceptions of whether girls and boys, and BAME children and White children, who become involved in criminal behaviour, are themselves at risk of harm. There is even less information about other social services involvement. Although a one-off publication of data from Youth Offending Teams shows that 5% of children were on Child Protection plans when admitted to secure custody, with around 30% having previously been on a plan, it does not give any further information about the kind of family issues that led to them being on a plan[77].

We therefore do not know the extent of previous social services involvement for these children in secure custody who have usually committed several previous crimes[78]. Regular involvement in criminal activity would usually indicate a safeguarding issue for children, and it is concerning if some children are not being identified as at risk. Our recent report '*Keeping Kids Safe'* showed the importance of treating criminal exploitation of young children as a safeguarding issue[79].

The NHS do not report on previous social service involvement, although a one-off NHS census report found that 44% of children in secure mental health wards were reported to have previously been looked after[80].

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[75] Department for Education, (2018), *Children looked after in England including adoption: 2017 to 2018*; Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England; HMIP, (2018), *Children in Custody 2017–18*; Youth Justice Board and Ministry of Justice, (2017), *Key Characteristics of Admissions to Youth Custody April 2014 to March 2016*

[76] HMIP, (2018), *Children in Custody 2017–18*

[77] Youth Justice Board and Ministry of Justice, (2017), *Key Characteristics of Admissions to Youth Custody April 2014 to March 2016*

[78] Ministry of Justice and Youth Justice Board, *Youth Justice Statistics 2016/17*, Chapter 10

[79] Children's Commissioner for England, (2019), *Keeping Kids Safe*

[80] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England, Appendix C, Figure 3

The Department for Education also do not report on previous involvement of children's social care for children placed in Secure Children's Homes. We would expect all children living there on welfare grounds to have been previously looked after as, except in exceptional circumstances, this is a requirement for being in a Secure Children's Home. The National Secure Welfare Co-ordination Unit, which was set up to manage all referrals to Secure Children's Homes, does publish some information on the children who are referred to Secure Children's Homes[81]. This data shows that 3% of children were not looked after before going into a secure home. It is interesting to note, however, that a one-off NHS census report found that only 88% of children detained on welfare grounds were previously looked after[82].

The National Secure Welfare Co-ordination Unit also report that 51% of children were previously in a residential placement, 9% were in a secure children's home and 8% were in a foster placement. 16% of children came from 'Other placements' which could include unregulated placements and semi-independent placements. They also found that the most common lengths of time for a child to have been looked after before entering secure care were less than 1 year, followed by more than five years.

Mental Health

There is no administrative data regularly published about the level of mental health needs for children in custody, or their previous involvement with mental health services. Various sources would suggest that between 30 and 40% of these children have a mental health concern[83].

Although the Department for Education reports on scores for 'Strengths and Difficulties Questionnaires' for all looked after children, which gives an indication of any emotional or behavioural difficulties, this data is not broken down for children in Secure Children's Homes. The main source of information is a one-off NHS census which shows that 59% (33) of those detained under welfare grounds had at least one mental health or neurodevelopmental need/diagnosis, 65% (50) had previous involvement with CAMHS, and 24% (19) had a previous placement in a secure hospital ward[84]. The National Secure Welfare Unit data on referrals shows that 2% of children referred to them were in mental health beds[85].

For children in mental health wards we know from the NHS that 155 children (20% of all children detained in the year) were detained more than once in 2017/18, but we do not have data about other previous mental health involvement. An NHS report found that 87% had

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[81] Secure Children's Homes and Hampshire County Council, (2019), *Secure Welfare Coordination Unit Annual Report*, available at: http://www.securechildrenshomes.org.uk/secure-welfare-coordination-unit-2018-data/

[82] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England, Appendix C, Figure 3

[83] Youth Justice Board and Ministry of Justice, (2017), *Key Characteristics of Admissions to Youth Custody April 2014 to March 2016*

[84] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England, Figures 9 and 10.

[85] Secure Children's Homes and Hampshire County Council, (2019), *Secure Welfare Coordination Unit Annual Report*, available at: http://www.securechildrenshomes.org.uk/secure-welfare-coordination-unit-2018-data/

previously had support from CAMHS, 67% (180) of children had previously been in an adolescent hospital ward and 5% (14) had previously been held in secure hospitals[86].

Criminal Justice System

We have some information from the Ministry of Justice about the history of offending for children in custody. The data shows that 89% of children in custody have previous convictions or cautions, and 71% have three or more[87]. They do not publish information on the number of children who have been in custody before, although the HMIP survey does ask this of children in YOIs and found that 38% had previously been in youth custody. One report found that 90% of children in youth custody had previous involvement from a Youth Offending Team[88].

For children in mental health wards or secure children's homes there is no publicly available data on their history of involvement with the criminal justice system. One recent NHS report found that 18% of those placed in secure mental health wards and 58% of those in welfare placements in secure children's homes have had contact with a Youth Offending Team[89]. It is however hard to say whether this reflects the different level of offending behaviour, or whether children have been diverted away from the youth justice system[90]. Two percent of children referred to secure children's homes were living in a YOI at the time of referral[91].

Education and learning needs

Information for the Youth Justice Board suggests that children in youth justice settings are more likely to have a learning difficulty, with Youth Offending Teams having concerns about learning needs for 32%[92] of children admitted to custody, compared to 14.6% of all children – although the YOT's definition of a learning difficulty may not exactly align with the official definition[93]. It is particularly striking that the Youth Justice Board report finds that 29% of 16 and 17 year olds in custody have learning difficulties, compared to 5% of all 16 and 17 year olds[94]. The same report also showed that 61% of children admitted to youth custody were not engaging in education[95]. However, this is quite significantly different to a recent survey of children in Youth Justice Settings which found that only 5% had learning disability identified

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[86] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England

[87] Ministry of Justice and Youth Justice Board, *Youth Justice Statistics 2016/17*, Additional Tables, Chapter 10

[88] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England

[89] Ibid

[90] Ibid

[91] Secure Children's Homes and Hampshire County Council, (2019), *Secure Welfare Coordination Unit Annual Report*, available at: http://www.securechildrenshomes.org.uk/secure-welfare-coordination-unit-2018-data/

[92] Youth Justice Board and Ministry of Justice, (2017), *Key Characteristics of Admissions to Youth Custody April 2014 to March 2016*

[93] Department for Education, (2018), *Special Educational Needs in England: January 2018*

[94] Ibid

[95] Youth Justice Board and Ministry of Justice, (2017), *Key Characteristics of Admissions to Youth Custody April 2014 to March 2016*

by staff[96]. This report found that 22% of children in mental health wards and 12% of those in Secure Children's Homes had learning needs.

We can see therefore that there appear to be children with similar characteristics, needs and life experiences who are being accommodated in very different types of setting. Without better data we will struggle to identify whether the system is indeed working to ensure that children with mental health, education, social or behavioural needs are diverted at the appropriate time to the most appropriate setting. Some research has raised concerns that this is not happening, and that children get 'stuck' in whichever part of the system originally identified them, rather than the one they most need:

> *'Of note, the majority of young people in secure hospitals (52%), YJS placements (60%) and a quarter (23%) of those on welfare placements had had a secure placement under the same legislation. Thus, it appears that once a young person has been picked up by one part of the system, they remain within that system (mental health, welfare, youth justice).'*[97]

Referral to Secure Settings

Another area with limited information concerns how many children are referred to secure settings but not admitted because of a lack of available resource, are admitted to settings that are not the most appropriate for them, or are kept waiting for an admission for a long time. We have submitted a data request to NHS England to provide information on the number of referrals to secure mental health wards for children, how long those children wait for a place, and how long they stay for. We are publishing these findings in forthcoming research, which shows that only 52% of referrals resulted in an admission, and that children waited for a month, on average, to be admitted.

We are also aware that there are more referrals to Secure Children's Homes than there are places available, although there is limited data available on this. The Secure Welfare Co-ordination Unit has recently published information on the number of open referrals they have (for children awaiting a place), showing that this peaked in July 2018 at 37 children waiting for a place[98]. It is important to remember that beds might not be available if a home feels they cannot meet the child's needs, or because they don't have sufficient staff, rather than simply because they are physically full. Judges have been raising concerns about being unable to make Secure Accommodation Orders to place children in a Secure Children's Home, as there have been no available places[99]. We cover below what we know about what happens to these children in our 'Invisible Children' section, but there is lots of missing information.

For children in the Youth Justice System, there isn't an option for a child to wait for a placement once they have been sentenced.

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[96] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England

[97] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England

[98] Secure Children's Homes and Hampshire County Council, (2019), *Secure Welfare Coordination Unit Annual Report*, available at: http://www.securechildrenshomes.org.uk/secure-welfare-coordination-unit-2018-data/

[99] O (A child : No Available Secure Accommodation) [2018] EWFC B60 (08 October 2018)

Distance from home of placements

Once it is decided that a secure setting is required for a child, it is quite likely that, due to the small numbers of such settings, they will be placed some distance from their home. Whilst for some children this may be beneficial – if the purpose of the placement is to keep them safe from people in their area – it may also mean they are separated from friends and family. The map below shows the location of all the Secure Children's Homes (green), Secure Training Centres (yellow) and Young Offender Institutions (red) in England and Wales. It is clear that for most children, detention in these settings will mean a long journey from home.

Figure 9[*]

**Note: on this map the blue dot represents both Cookham Wood and Medway, as they are very close to one another.*

There is no publicly available list of all mental health units where children are looked after securely. We requested information from the NHS about the number of beds across the country in order to get an understanding of the access of children in each area to services.

The map below shows the number of secure mental health beds available per 100,000 under 18s.

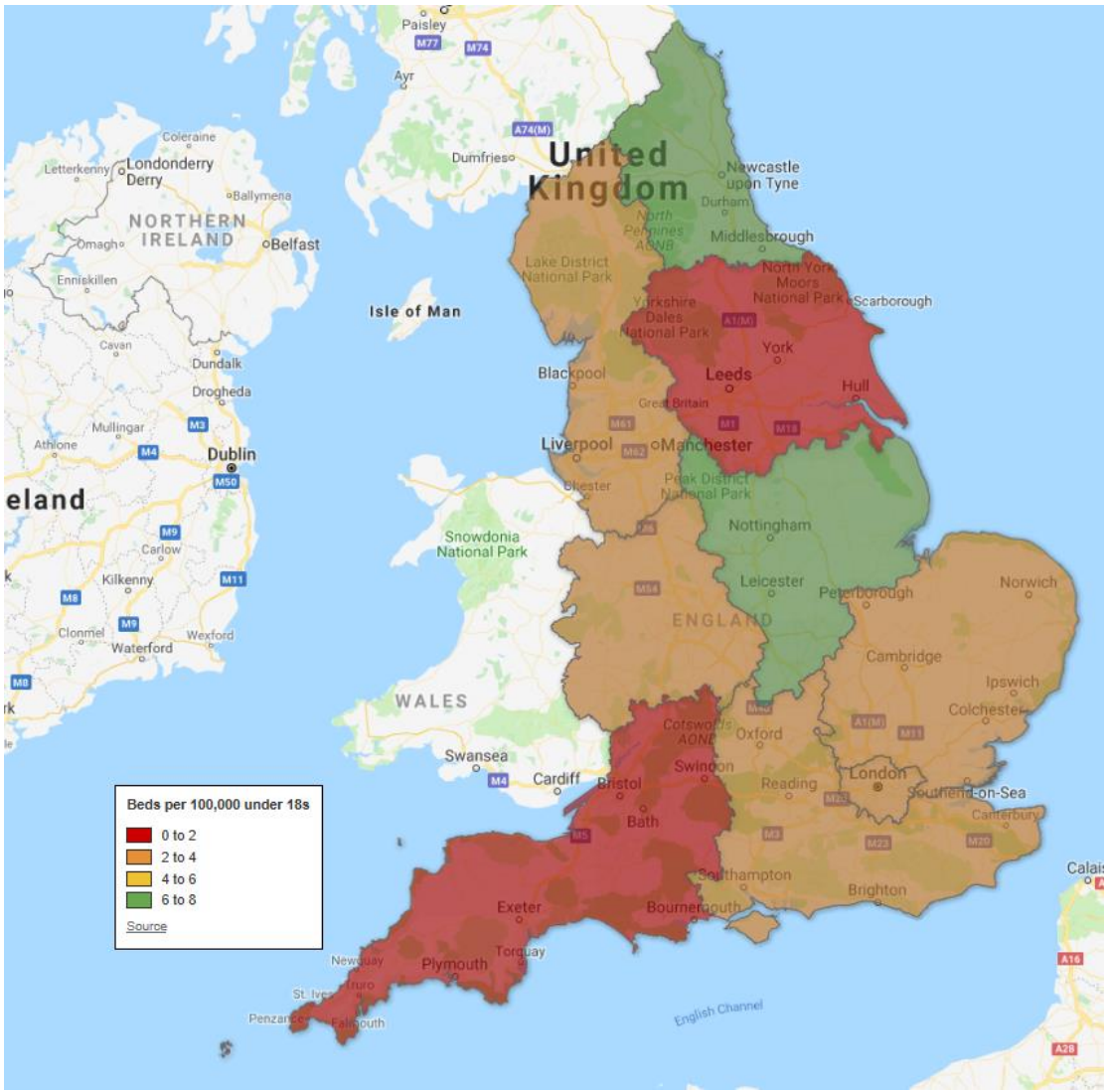

Figure 10

The only official source of data on how far children are placed from home is in Youth Justice Annual Statistics, which show that 72% of children were placed more than 24 miles away from their homes, and 37% were more than 50 miles away[100]. The Department for Education's Children Looked After Statistics detail whether children are placed under or over twenty miles from home – but the category that includes SCHs is 'Secure units, children's homes and semi-independent living accommodation', and is not broken down further. In this category 41% of children are placed more than 20 miles from home.

[100] Ministry of Justice and Youth Justice Board, *Youth Justice Statistics 2016/17*, Additional Tables, Chapter 7

For most children our only source of information is a one-off census carried out by NHS researchers. They found that 91% of those in secure children's homes, 89% of those in mental health wards and 78% of children in youth custody were placed outside their home county[101]. This is of concern, as it places a significant strain on families to maintain their relationships with children who have been detained.

Length of Stay in Secure Settings

The Ministry of Justice and Youth Justice Board produce annual statistics on the length of time spent in Youth Custody for sentences ending in that year. They show that in 2016/17 the majority (57%) of episodes were for less than 3 months[102], although this includes remand episodes where 85% were for less than 3 months. However, there were 34 children held in custody on remand for over 6 months in the year ending March 2017, 7 of whom were held for over 9 months[103]. It is of particular concern that children who may not even have committed a crime are being detained for such long periods of time. When remand is excluded 46% of sentences were for less than 3 months.

The median length of stay was 3 months in SCHs, 2 months in STCs and 2.9 months in YOIs. For children who moved between institution types the average length of stay was nearly ten months. The figures also show that there were 35 children (2% of the custody population) who served sentences of over two years.

These figures are quite different to those provided in a recent one-off NHS census report where the median stay in YOIs was 9 months (40 weeks) and 8 months (36.1 weeks) in STCs[104]. It is not clear why there is such a difference between these figures, but it is worth noting that they do look at different things. The NHS census asked staff for the anticipated date of discharge, whilst the MoJ/YJB statistics look at the actual number of days spent in custody for all those sentences which ended that year.

The DfE annual statistics provide information on length of stay in Secure Children's Homes, showing that the highest proportion (33%) of detentions is between one and three months. These figures are not broken down into those detained on welfare grounds and those on youth justice grounds[105]. A NHS census reported that the welfare detentions in SCHs were on average for a shorter period than criminal justice ones – around 3 months (13.6 weeks) compared to 6.8 months (29.4 weeks)[106]. Again, these are much higher than the figures in official statistics.

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[101] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England

[102] The figures given in the report are for 91 days, 3 months is used for ease of reading

[103] Ministry of Justice and Youth Justice Board, (2018), *Length of Time Spent in Youth Custody 2016 to 2017*

[104] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England

[105] Department for Education, *Children accommodated in secure children's homes: 31 March 2018*

[106] Hales, H. et al, (2018), *Secure Settings for Young People A National Scoping Exercise - Paper 2 - Census Report,* NHS England, Appendix C, Table 6

We do not have any publicly available data from NHS England about how long children spend in hospital once they have been detained, however our findings from our recent data request to NHS England show that the average length of stay in a low secure mental health wards was 9 months, and 13 months in medium secure wards[107]. This is quite similar to the findings of a recent NHS census report, which showed that the median stay in medium secure units was 15 months. That report also found that the median stay in PICUs was 15.9 weeks (3.7 months). PICUs are designed to care for children undergoing short-term disturbances, so we would expect the stays there to be shortest; it is very worrying that this study found the median length of stay was much longer than the maximum of six weeks recommended in the guidance[108]. We are aware of one child, who contacted us through our Help at Hand advice service, who had been in a PICU for 5 months.

The only comparable figures about length of stay in secure settings across all institutions therefore comes from the NHS census report, although this has quite different findings to the official youth justice statistics. It appears that children in Medium Secure Mental Health wards have the longest stays of all children in secure settings. Our cost analysis also shows that these settings have the highest daily cost of any placement.

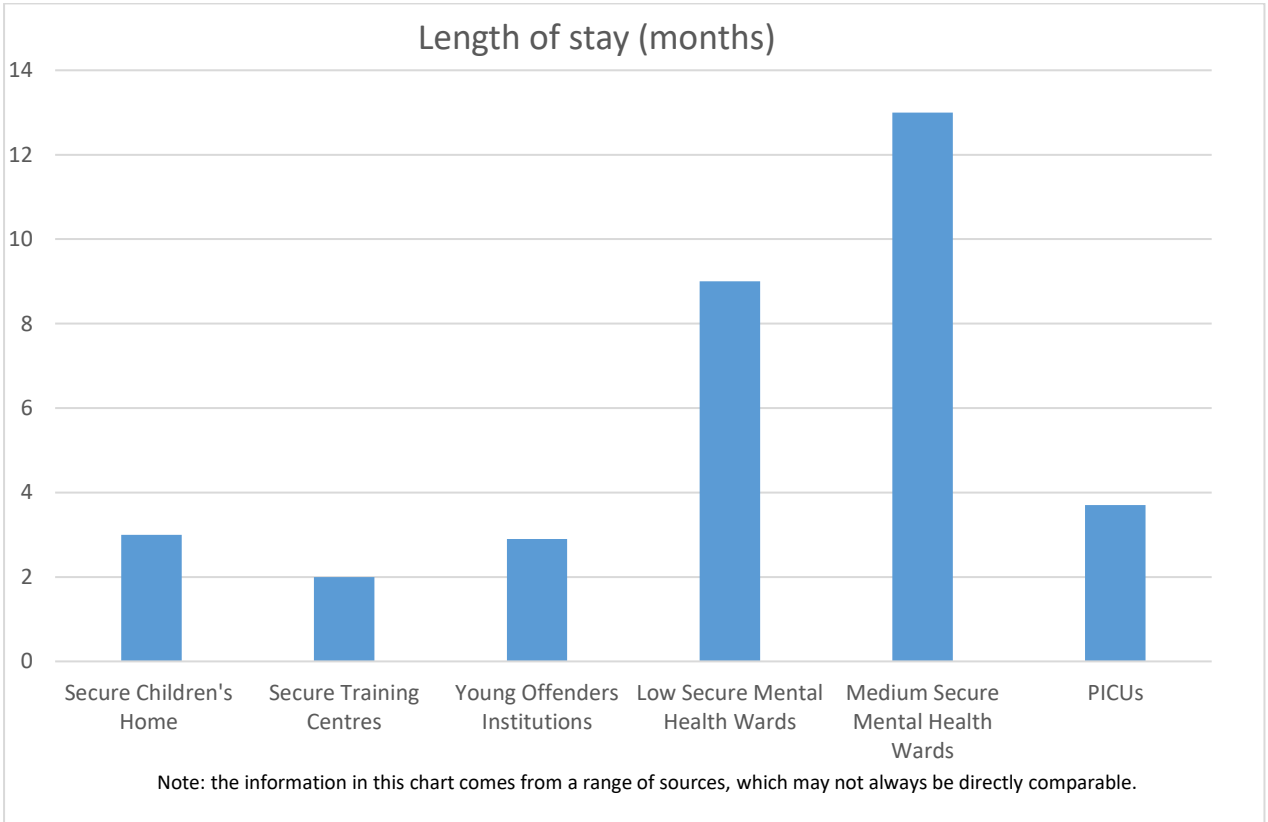

Figure 11: length of stay in secure settings

[107] Forthcoming research from the Office of the Children's Commissioner
[108] NAPICU, (2015), *National Minimum Standards for Psychiatric Intensive Care Units for Young People*

Destination on Leaving Secure Setting

For children in youth justice settings the Ministry of Justice provides some basic information on where they go after their period of detention ends. The figures are most recently available for the year ending March 2017 and show that 13.5% (99) of custodial sentences ended with a transfer to the over 18 secure estate and 85.8% (1,240) with a release to the community. They state that they do not provide the numbers for those transferred to secure mental health units, but we can infer that this may apply to some of the 0.7% not accounted for. We do not have any equivalent data for children in mental health wards or Secure Children's Homes. This means that we do not know if children are moving between settings during a period of detention, or if the different institutions are operating in silos.

Invisible Children

So far we have examined the most common ways that children are deprived of their liberty – when sectioned under the Mental Health Act, when sentenced to youth custody, or when detained in a Secure Children's Home under section 25 of the Children Act. For each of these scenarios there is distinct legislation which clearly sets out in what circumstances someone can be detained and for how long. While it is still concerning that so many children are being securely detained, we do at least know what legal protections they have and that they are in settings inspected specifically for their appropriateness to detain children. We should perhaps be even more concerned about the children who do not show up in any of these figures, where the legal basis of their detention is much less clear, and their location is unknown.

Deprivation of Liberty

The current agreed test for whether someone is officially deprived of their liberty is whether:

- Someone is confined in a particular restricted place for a not negligible length of time. This is where a person is under complete supervision and control of those caring for her and is not free to leave[109].
- There is no valid consent for that confinement
- The responsibility for that confinement can be attributed to the state[110]

For example, a child with severe learning difficulties in a residential special school, who needs constant supervision, and whose room is locked at night in order to keep them safe, might be described as being deprived of their liberty, but this could not be authorised under the Mental Health Act, a Secure Accommodation Order or youth justice legislation.

Deprivation of Liberty with Consent

As the test above shows, if someone can provide valid consent (there will be cases, discussed below, where consent is not deemed valid) then a placement will not technically be considered a 'deprivation of liberty', no matter what restrictions are in place, and the required legal safeguards will not apply.

It could be that the child provides consent on their own, or a parent can provide consent on their child's behalf if the child is under 16 and not 'Gillick competent' – this means if the child does not pass certain tests to show that they are mature enough to consent on their own behalf[111]. There is currently an ongoing appeal about whether parents can consent on behalf of children aged over 16 without capacity, and we await the final ruling from the Supreme

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[109] Lady Hale [P (by his litigation friend the Official Solicitor) v Cheshire West and Chester Council & Anor [2014] UKSC 19 (19 March 2014), paragraph 54]. Other judgements have made clear that this does not apply to very young children, where we would always expect this kind of close supervision D (A Child ; deprivation of liberty), Re [2015] EWHC 922 (Fam) (31 March 2015)} The Mental Capacity Amendment Bill, currently progressing through parliament, will likely introduce a new definition of the deprivation of liberty

[110] Re A-F (Children) [2018] EWHC 138 Fam

[111] Some recent cases have shown that it is not always clear what tests should be used to determine if a child can consent to a decision, and there are calls for this to be clarified, for example in : Department of Health and Social Care, (2018), *Modernising the Mental Health Act – final report from the independent review*

Court on this matter[112]. If a child who has the capacity and maturity to consent on their own behalf does not do so, then practitioners should not rely on parental consent to overrule this[113] and will need to consider other legal avenues for detaining the child.

It may well be in the best interests of the child to be placed in a setting which does deprive them of their liberty. However, where children are so placed with their parents' consent there is no clear record of them in official statistics – they will not even appear in the court statistics we examine later in this section.

This is concerning as it means, as one legal commentary on the case of 'Child D' who was detained with parental consent put it, that:

> *'In concrete terms, it resulted in a disabled 15 year old being confined in a psychiatric hospital for fifteen months without any formalised admission procedures indicating who could propose admission, for what reasons, and on the basis of what kind of medical and other assessments and conclusions. There was no requirement to fix the exact purpose of the admission; no limits in terms of time, treatment or care attached to the admission; no independent scrutiny; and D was afforded* [no] *independent representation to challenge the circumstances. This was justified, in essence, on the basis of the bona fides of his parents and the treating doctors'*.'[114]

If, as is likely, a parent is only presented with one choice of provider by the professionals involved it brings into question how valid their consent is when they have no other viable options, and if it is therefore appropriate to rely on it.

Deprivation of liberty through the courts

We now look at those who are placed in these kinds of specialist, restrictive settings where it is decided that a court order **is** needed to authorise their deprivation of liberty.

Court approval would be needed where it is decided that a parent or child cannot provide valid consent. Parents might not be able to provide consent if they themselves do not have mental capacity or if there are reasons to doubt their parental capacity, for example if an interim or final care order is in place. There are also decisions which fall outside what is known as the 'zone of parental control'. As described above, if a child who is deemed competent to make a decision about their care is refusing it, then parental consent should not be used[115] and the matter would need to be resolved in court which can overrule a child's refusal if it is in their best interests[116]. Case law is clear that a Local Authority cannot consent to this kind of plan on behalf of Looked After Children[117].

If there is no valid consent, and if the Mental Health Act, Youth Justice legislation and s25 of

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[112] D (A Child ; deprivation of liberty), Re [2015] EWHC 922 (Fam) (31 March 2015) The ruling in this case was controversial, and was appealed in the Supreme Court – although the case was heard in October 2018 they have not yet reached a judgement. Some voices are calling for the decision to be overturned, with the Independent Review of the Mental Health Act suggesting that parents should not be able to consent in this way

[113] Department of Health, *Mental Health Act 1983: Code of Practice*

[114] 39 Essex Chambers, (2015), *D (A Child) (Deprivation of Liberty*) [2015] EWHC 922 (Fam), comment

[115] Department for Constitutional Affairs, (2017)., *Mental Capacity Act 2005 Code of Practice*

[116] Re W (a minor) (medical treatment: courts jurisdiction): CA 1992

[117] A Local Authority v D and Others [2015] EWHC 3125 (Fam)

the Children Act do not apply then those intending to detain the child will need to apply to court to authorise the deprivation of liberty. If the case is about a child aged over 16 without mental capacity, then they would go to the Court of Protection as the Mental Capacity Act applies. In all other cases, they would need to apply to the high court to use their 'inherent jurisdiction' to authorise a deprivation of liberty. Inherent jurisdiction essentially means the court issuing an order when there is no existing law which can be used to make that order. Once an order has been made by a court to authorise the deprivation of liberty, they are usually reviewed by a judge every year; in comparison a Secure Accommodation Order can only last for three months when it is first made.

Judges have been highlighting for some time that they are particularly concerned about one use of their inherent jurisdiction. This is when they receive applications concerning children who both they and the applying Local Authorities believe should be, but are not being, accommodated in Secure Childrens Homes under a Secure Accommodation Order (SAO)[118]. When no beds are available in secure homes, Local Authorities are instead having to seek deprivation of liberty authorisation from the high court to place children in other settings, even if they are not the most appropriate places for them[119]. A recent case described a child who had been taken into care at eleven, and by thirteen had already lived in six different residential settings, each of which broke down as staff were unable to handle his behaviour.

The official Secure Children's Homes need to be individually approved by the Secretary of State to hold children with extremely high needs. It is very concerning that children who meet all the criteria for being detained in a Secure Children's Home are in fact being sent to alternative placements, sometimes described as 'quasi-secure' homes. This is not a legal category of children's home, and the court process itself does not provide any assurances about the suitability of the accommodation. These homes therefore cannot provide the high level of supervision children need, or are providing it without officially being approved to do so.

How many children are deprived of their liberty in this way?

At present the number of children that are affected is unknown[120]. The Ministry of Justice does not collect data on the number of these deprivation of liberty authorisations made in Family Court, however CAFCASS have provided information[121] to show that in 2017-18 there were 122 children on applications for deprivation of liberty authorisations in the Family Court,

[118] A Secure Accommodation Order can be made under s25 of the Children Act, where a child needs to be in a secure placement for their own safety. Only secure children's homes approved by the Secretary of State can receive children on Secure Accommodation Orders.

[119] T (A Child) [2018] EWCA Civ 2136; A Child (no approved secure accommodation available; deprivation of liberty) [2017] EWHC 2458 (Fam)

[120] In one recent case Andrew MacFarlane, the head of the Family Division of the High Court, raised concerns about the volume of these applications. He was not able to find the numbers of children where this alternative is being used, and these concerns were raised by the Chair of the Justice Committee in a letter to the Secretary of State for Justice. The response stated that '*Officials are investigating whether these cases can be identified from existing data or whether a new mechanism for gathering the data would be required*', Rt Hon David Gauke MP, Letter to Bob Neill MP, 'T (A Child): Secure Accommodation For Under 18s', 24th January 2019

[121] Information requested from CAFCASS for this report

and at 31st January 2019 there were 185 for the 2018-19 financial year[122]. They also provided data to show that for this year, 49% were for children aged 10 to 15 and 51% were for over 15s. These numbers only include cases where a child has been made 'a party' to proceedings, and although guidance suggests that they should be this will not always be the case[123]. CAFCASS do not collate the data on the kinds of settings children are placed in as a result of each order, or what number of these applications were granted.

The Ministry of Justice provided information to show that for the 2017/18 financial year there were 89 children on applications related to deprivation of liberty in the Court of Protection, for those aged between 16 and 18. We do not have any further information about the circumstances for the children these orders concern, whether the applications were granted or where the children were placed[124].

This means that in 2017/18 there were 211 children for whom applications were made to courts to deprive them of their liberty, and it looks like numbers will be higher for the 2018/19 financial year – although we do not know how many of these applications were granted. It is positive that there are rigorous legal procedures being used for these children, although the court process itself may be distressing for them. However, without any required reporting mechanisms about these types of cases it is hard to identify the number of children affected or any emerging issues, or to hold Local Authorities to account for using, or failing to use, the appropriate legal safeguards[125]. Even with the information we do have, it is not possible to see what kind of settings children are being held in, as authorisations under the inherent jurisdiction do not – unlike all other ways of depriving children of liberty – only allow them to be held in settings specifically approved to do so.

Legal confusion

This section has also shown how the law around seeking a deprivation of liberty authorisation is complicated, and there is no standard guidance for Local Authorities about when to seek them. A report by the Law Commission found that that *'residential special schools make regular requests to the placing local authority asking them to apply to the Court of Protection for orders authorising deprivations of liberty, but the majority have had no response, leaving them in a "precarious legal position"*[126]. As one recent court case revealed, a child had been deprived of his liberty without any legal basis for over a year – we cannot know how many other children are in the same situation [127]. This would mean that there are children who are being deprived of their liberty, but where no legal safeguards are in place – in that case the figures we have been provided with could be the tip of the iceberg when it comes to the true number of children deprived of their liberty. As children being deprived of their liberty may be in a range of different accommodation – such as foster homes, residential special schools or children's homes – there is no single inspection framework which picks up on a Local

[122] This will only include cases where a child was made a 'party', which CAFCASS reports should be the case.

[123] Re A-F (Children) [2018] EWHC 138 Fam

[124] Information provided by Ministry of Justice for this report

[125] Sir James Munby has suggested in a recent ruling that it might be beneficial to alter the forms needed when care orders are applied for so that anything that may amount to a deprivation of liberty is standardly recorded. This would make it much easier to identify the number of Looked After Children, at least, to whom this applies.

[126] Law Commission, (2017), *Mental Capacity and Deprivation of Liberty*, HC 1079

[127] Y (Autism -Care Proceedings- Deprivation of Liberty), Re [2018] EWHC B63 (23 April 2018)

Authority's use, or not, of deprivation of liberty authorisations.

There is also legal confusion for the children themselves and their families. Because there is no legislation or guidance that sets out the specific conditions, process or appeals procedure for the use of the inherent jurisdiction it is harder for friends and family to understand their and their child's rights, and to ensure that they are being protected.

In addition, there are soon to be significant changes made to the Mental Capacity Act. Although the Mental Capacity Act currently applies to 16-and-17 year olds, a court authorisation still needs to be sought from the Court of Protection to deprive children of their liberty. However, the Mental Capacity Amendment Bill -currently awaiting Royal Assent - proposes creating a new process called the 'Liberty Protection Safeguards' for depriving adults and children over 16 of their liberty. The Bill's Equality Impact Assessment suggests this will make for an easier and swifter process for 16-and-17 year olds, but also suggests that only between four and twelve applications to the Court of Protection were made by Local Authorities[128]. This is significantly lower than the 89 children the Ministry of Justice identified for this report; we have not been able to discover the reason for this discrepancy. We are working on helping to draft the new Liberty Protection Safeguards Code of Practice to ensure that the new safeguards for 16 and 17 year olds are at least as stringent as the current safeguards.

Where are these children?

Due to the lack of reporting we therefore have no certain way of knowing where these children who are deprived of their liberty are living. We can assume, from the specific cases that we know of, that children are likely to be in children's homes, care homes, hospitals, residential special schools, foster placements and unregulated provision, but we have very limited evidence to identify which of these are used, and with what frequency.

We know that restraint can be used on children in a range of different settings, but unfortunately there are few available statistics about high levels of restraint being used which could help to identify possible deprivations of liberty beyond the secure estate. Ofsted statistics show that 650 children living in foster care were subject to physical restraint in 2016/17[129], but we do not have data on the frequency or intensity of that restraint. We do not have equivalent data for children's homes, even though regulations state that it must be recorded (unless regular restraint is recorded as needed on their EHC plans[130]), and it is not a requirement for residential schools to record and report all instances of restraint[131], although they are required to have a policy about the use of restraint and when to record it[132]. A recent report by the Challenging Behaviour Foundation found that 35% of the disabled children that their organisation supports were regularly physically restrained[133]. The NHS reports that there

[128] Department of Health and Social Care, (2018), Liberty Protection Safeguards – Mental Capacity (Amendment) Bill Equality Analysis

[129] Ofsted, (2018), *Fostering in England 1 April 2016 to 31 March 2017*

[130] Department for Education, (2015), *Guide to the Children's Homes Regulations including the quality standards*, Paragraph 9.61

[131] Ofsted explain that as children's homes are inspected annually they do not report statistics on restraint as these are collated for foster homes in order to identify possible issues which may trigger an inspection.

[132] Department for Education, (2015), *Residential special schools National minimum standards*

[133] Challenging Behaviour Foundation, (2019) *Reducing Restrictive Intervention of Children and Young People*

were 26,826 incidents of restraint for 1,047 people aged under 20 in contact with NHS funded secondary mental health, learning disabilities and autism services, but we do not know how many of those were detained under the Mental Health Act[134]. If Looked After Children are likely to need physical interventions this should be recorded in their placement plans, yet there is no record of the number of plans where this is the case. It is also not clearly stated in the guidance that an EHC plan should detail if restraint is regularly required, and we do not have data on the number of plans where it is needed.

It is not just children who are deprived of their liberty under the inherent jurisdiction where we do not know where they are living. This is also the case for children in mental health hospitals: although the NHS figures provide us with the number of children detained in hospital under the Mental Health Act, they do not provide information on where those children are detained. Not all sectioned children will be in the secure units we describe above, and will sometimes be detained on other types of ward – such as a specialist Eating Disorder or Learning Disability wards.

Monitoring and improving the quality of care

Without the information about the kind of settings these children are in it is much harder to monitor whether those settings are always appropriate places for children to be deprived of their liberty. As judges are not inspecting settings that children are being sent to, it is vital that Local Authorities and Ofsted do not mistake a court approval of deprivation of liberty for any guarantee that a placement is meeting a child's needs, and remain vigilant about ensuring placements are and remain appropriate. Looked After Children, in whatever setting they are living in, need to be visited every six weeks (or every three weeks if the placement is going to last until they are 18) to ensure they are being appropriately cared for, which provides an additional layer of safeguarding for these children. However, many of the children living in these settings will not be Looked After, and for those children, guidance sets out that they will only be visited once every six months, and that this will happen once they have been there for over three months[135].

It is not just that these settings might not always be appropriate for children to be deprived of their liberty, but also that they are not part of the 'official' secure estate, which means they may well be overlooked when it comes to innovations or improvements in care. To give just one example, NHS England have led a partnership implementing a framework called 'SECURE STAIRS' – an approach to supporting children across Secure Children's Homes, Secure Training Centres and Young Offender Institutions, who they describe as 'high risk, high harm, and high vulnerability' as they have identified that:

> *'There appears to be a growing consensus amongst those with experience of working with young people across a range of community, hospital and secure environments in the UK, that there is core cohort of young people who present with high levels of complexity that challenge whole systems of support across different "sectors" including mental health, social care, criminal justice and education.'*[136]

This kind of integrated approach is very positive, but there is no mention of how this approach

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[134] NHS England (2018), *Mental Health Bulletin 2017-18, Annual Report*

[135] Department for Education and Department for Health, *Statutory visits to children with special educational needs and disabilities or health conditions in long-term residential settings*

[136] Jenny Taylor, Lisa Shostak, Andrew Rogers, Paul Mitchell, (2018) "Rethinking mental health provision in the secure estate for children and young people: a framework for integrated care (SECURE STAIRS)", Safer Communities, Vol. 17 Issue: 4, pp.193-201

could be rolled out to children who have been deprived of liberty in the 'quasi' secure accommodations which judges have raised their concerns about.

Conclusion

What data do we have, and not have?

This exercise has shown that answering what ought to be a fairly straightforward question – who are the children in England who are deprived of their liberty at any given time? – is in fact quite complicated. Data which is regularly published by departments allows us to come up with an estimate of the number of children living in secure settings in England at the end of March 2018. This showed a total of **1,465** children detained in secure settings, of which 505 are in mental health settings, 87 are in secure children's homes on welfare grounds and 873 in youth custody. We know that the total figure could be an underestimate, as the NHS reports that only about three quarters of providers of mental health services for children complete their data returns, and that this is particularly true for private providers.

Perhaps most importantly, these figures do not include the children described in the 'Invisible children' chapter, where their deprivation of liberty has either been authorised under the inherent jurisdiction of the court, the Court of Protection or perhaps not authorised at all. We therefore have no publicly available information about where they are living or their well-being. In 2017/18 there were 211 children whose deprivation of liberty was approved by the courts, and the legal confusion about these court processes could mean there are more children in restrictive settings who have not had their detention approved by the courts. While many children in these settings are likely being well cared for, we are concerned that the lack of transparency about the high level of intervention needed to look after these children, the appropriateness of the settings, and the legal safeguards in place for them mean that these children are in some ways the most vulnerable.

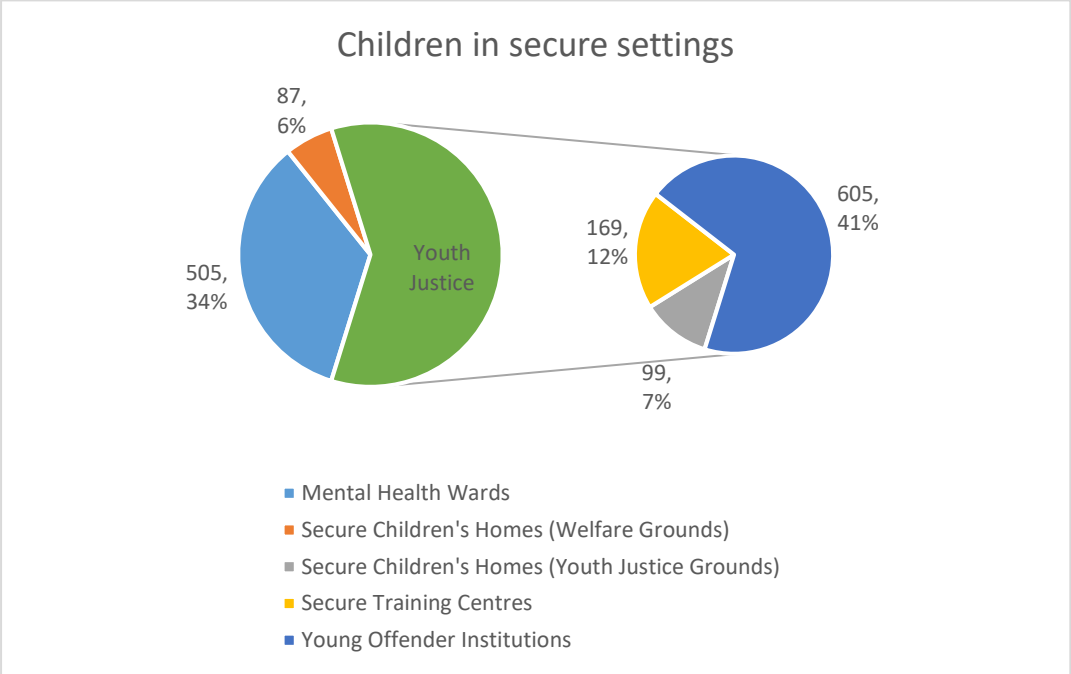


Figure 12: children in secure settings

Basic Information

Beyond the overall figure we have no regular data that allows us to look at characteristics of children across the secure estate. Youth justice settings probably have the most comprehensive information available – there is monthly data published on the age, gender and ethnicity of detained children. The NHS also publishes monthly information on the number of children detained in hospital, and does provide information about the age, gender and ethnicity of the annually recorded detentions (although this is not available for a snapshot of children detained at any one time). The Department for Education publishes annual figures on the age and sex of children detained in Secure Children's Homes, but not their ethnicity.

We know that the characteristics of children vary by setting. Boys are far more likely to be detained in youth justice settings, whilst girls are more likely to be in mental health wards. We know that for children under 16 this does not reflect the incidence of mental health concerns, so raises the question of how much a role gender plays in the assessment of children's needs. We know black children are over-represented in youth custody, and it is worth noting that none of the published data breaks down ethnicity to enable us to see the numbers of Gypsy, Roma or Traveller children detained, although research suggests that they are also over-represented, and more likely to have worse experiences. BAME children also seem from the data to be more likely to be detained on remand, and more likely to be sent to YOIs/STCs rather than SCHs, than their white counterparts.

There is of course other research based on surveys, or individual analyses of administrative data. Some of these surveys – such as the HMIP survey on children in custody – are repeated regularly, but this is not true for all surveys, and they will not give us complete coverage. In particular, the detailed demographic information on children in secure mental health settings was a report of a one-off survey from September 2016 which made clear how much work was needed to gather what should be quite straightforward information.

Information about the pathway through Secure Settings

We have even more limited information about how long children stay in secure settings, how long they wait for a place, whether they face delays in the transfer of care to the community, and what happens when they leave. Of course, we have none of this information for the 'invisible children' identified above, but the situation is nearly as bad for children in other settings. For children in youth justice settings we know the legal basis for their detention, how long they stay in the settings, and limited information on where they go when they leave. We have information about how long children stay in Secure Children's Homes, although these figures are not broken down by whether children are there on a youth justice or welfare basis. For those detained under the Mental Health Act we have none of this information. Our report on the data request made of NHS England on low and medium secure mental health wards contains as much information as we have been able to gather on children detained in those settings, but also shows just how difficult it has been for the NHS to gather this information. We know of individual cases through our helpline of children being held for years in mental health settings when they could have been helped in the community; children staying longer than they should in Secure Children's Homes because no other suitable placements are

available; and even (in extreme cases) of children not being released from youth custody on time due to lack of placements to be released to.

Do secure settings meet children's needs?

What research shows us is that children in all secure settings seem to have quite similar levels of high needs – they are much more likely than the general population to suffer from mental ill health and to have experienced very difficult family lives (as evidenced by the high rate of looked after children in the cohort). This must force us to ask why so many children with additional needs end up in secure settings in general, but particularly in youth custody settings, rather than mental health or welfare settings. It also appears from the data that there is very low movement between settings, particularly from the youth justice system to the mental health system, which could be because each child is correctly assessed to begin with, or because these moves are not happening enough. Children's characteristics, such as gender and ethnicity, appear to play a role in determining which kind of setting they end up in, in ways that may not be related to their actual needs. This all raises serious questions about whether children are in the appropriate setting for their needs at any given time.

Children, their families, and professionals may well move through these different systems, which are all designed with the intention of keeping children safe from harming themselves or others, and to meet the welfare and educational needs of children in quite similar ways. Especially as we improve our understanding that those children who have been involved in criminal behaviour are themselves in need of safeguarding, we may come to understand that many of those children we currently deem to need youth justice intervention in fact need welfare support[137]. It therefore seems surprising that there is such inconsistency between different settings – YOIs, STCs, SCHs, foster places, hospitals, children's homes and schools all have different rules about the use of restraint, for example. They are all inspected under different regimes, by different inspectorates and have different standards they must abide by.

And crucially, when policymakers talk about children in the 'secure estate' or consider ways to improve the quality of provision, we must not forget about those children who are less visible to us, who are deprived of liberty in what have become known as 'quasi' secure accommodation, or in other kinds of provision such as residential special schools . They are likely to be just as vulnerable, have similar needs to those in settings that we know about, and must not be overlooked simply because they are harder to find.

Recommendations

The Department for Education, Ministry of Justice and Department for Health and Social Care should set up a joint working group to better understand the group of children across the secure estate. This group should look at:

- better collection of data on these children, as outlined in more detailed recommendations below;
- lessons that can be learned across the sectors on issues such as restraint and segregation and managing violent behaviour;
- better understanding of the pathway of children into and out of the secure estate and between different sectors of secure accommodation.

[137] Children's Commissioner for England, (2019), *Keeping Kids Safe*

Identifying children deprived of their liberty:

- Local Authorities should provide data to the Office of the Children's Commissioner, Ofsted and the CQC on the number of children deprived of liberty in their area at any one time, the legal basis for that deprivation of liberty, and where those children are living

- If a child is going through care proceedings, and the placement plan would amount to a deprivation of liberty, this should be standardly recorded in care order applications. Likewise, in any s20 agreements it should be made clear if the placement amounts to a deprivation of liberty

- It should be a requirement for any EHC plan to detail if the provisions amount to a deprivation of liberty

Characteristics of children in secure settings:

- The DfE should publish the ethnicity of children detained in Secure Children's Homes, on welfare grounds

- NHS should increase coverage of data returns to 100% of settings

- Data which is routinely collected on admission to custody, mental health wards or Secure Children's homes about the mental health, learning or social care needs of children in settings should be published annually

Children's pathways through secure settings:

- Data on how long children have to wait to access a bed in a Secure Children's Home should be published by Local Authorities (whether this is from the community or another setting).

- Data on how long children have to wait to access a bed in an appropriate mental health ward should be published by NHS England (whether this is from the community or another setting).

- NHS England should publish figures about the length of stay in hospital for children sectioned under the Mental Health Act.

- All settings should publish figures on discharges that are delayed due to lack of appropriate placements.

Appendix A – Secure Settings in England

Mental Health Settings

Provider Name	Unit Name	Service Category	Beds	CQC Rating
Birmingham And Solihull Mental Health NHS FT	Adriatric	CAMHS Low Secure	5	Good
Birmingham And Solihull Mental Health NHS FT	Ardenleigh	CAMHS Med Secure	12	Good
Cygnet Health Care Limited	Cygnet Hospital Bury	CAMHS Low Secure	8	Good
Cygnet Health Care Limited	Cygnet Hospital Bury	CAMHS PICU	12	Good
Cygnet Health Care Limited	Cygnet Hospital Sheffield	CAMHS PICU	12	Requires Improvement
East London NHS Foundation Trust	Coborn Centre	CAMHS PICU	16	Outstanding
Elysium Healthcare	Potters Bar	CAMHS Low Secure	19	Not inspected yet
Essex Partnership University NHS Foundation Trust	St Aubyn Centre	CAMHS PICU	9	Good
Greater Manchester Mental Health NHS Foundation Trust	Gardner Unit	CAMHS Med Secure	10	Good
Northumberland, Tyne And Wear NHS Foundation Trust	Ferndene	CAMHS Low Secure LD/ASC	8	Outstanding
Northumberland, Tyne And Wear NHS Foundation Trust	Alnwood	CAMHS Med Secure	7	Outstanding
Northumberland, Tyne And Wear NHS Foundation Trust	Lennox	CAMHS Med Secure LD/ASC	7	Outstanding
Northumberland, Tyne And Wear NHS Foundation Trust	Ferndene	CAMHS PICU	4	Outstanding
Nottinghamshire Healthcare NHS Trust	Hopewood - The Lookout	CAMHS PICU	8	Not inspected yet
Priory Group Limited	Priory Hospital Cheadle Royal	CAMHS Low Secure	10	Good
Priory Group Limited	Priory Hospital Cheadle Royal	CAMHS PICU	16	Good
Priory Group Limited	Priory Hospital Bristol	CAMHS PICU	12	Good
Priory Group Limited	Ellingham Hospital	CAMHS Low Secure LD/ASC	8	Requires Improvement
Priory Group Limited	Kent House Hospital	CAMHS Low Secure	17	Good

South London And Maudsley NHS Foundation Trust	Bethlem Royal Hospital (PICU)	CAMHS PICU	8	Good
Southern Health NHS Foundation Trust	Bluebird	CAMHS Low Secure	6	Requires Improvement
Southern Health NHS Foundation Trust	Bluebird	CAMHS Med Secure	13	Requires Improvement
St Andrews Healthcare	St Andrews - Northampton	CAMHS Low Secure	38	Requires Improvement
St Andrews Healthcare	St Andrews - Northampton	CAMHS Low Secure LD/ASC	17	Requires Improvement
St Andrews Healthcare	St Andrews - Northampton	CAMHS Med Secure LD/ASC	14	Requires Improvement
Tees Esk And Wear Valleys NHS Foundation Trust	West Lane Hospital	CAMHS Low Secure	10	Good
The Huntercombe Group	Huntercombe - Maidenhead	CAMHS PICU	29	Good
The Huntercombe Group	Huntercombe Hospital - Stafford	CAMHS PICU	12	Good
West London Mental Health NHS Trust	Three Bridges (The Wells Unit)	CAMHS Med Secure	8	Good

Secure Children's Homes

Institution Name	Beds	Ofsted Rating
Lansdowne Secure Unit	7	Good
Kyloe House Secure Children's Home	12	Good
Aycliffe Secure Centre	38	Good
Clayfields House	18	Good
Lincolnshire Secure Unit	12	Good
Atkinson Secure Children's Home	12	Good
Aldine House Secure Children's Centre	8	Good
Beechfield Secure Unit	7	Inadequate
Adel Beck Secure Children's Home	24	Outstanding
Barton Moss Secure Care Centre	27	Outstanding
St Catherine's Secure Centre	12	Requires Improvement
Clare Lodge Secure Children's Hom	16	Requires Improvement
Vinney Green Secure Unit	24	Requires Improvement
Swanwick Lodge	16	Requires Improvement

Youth Justice Settings

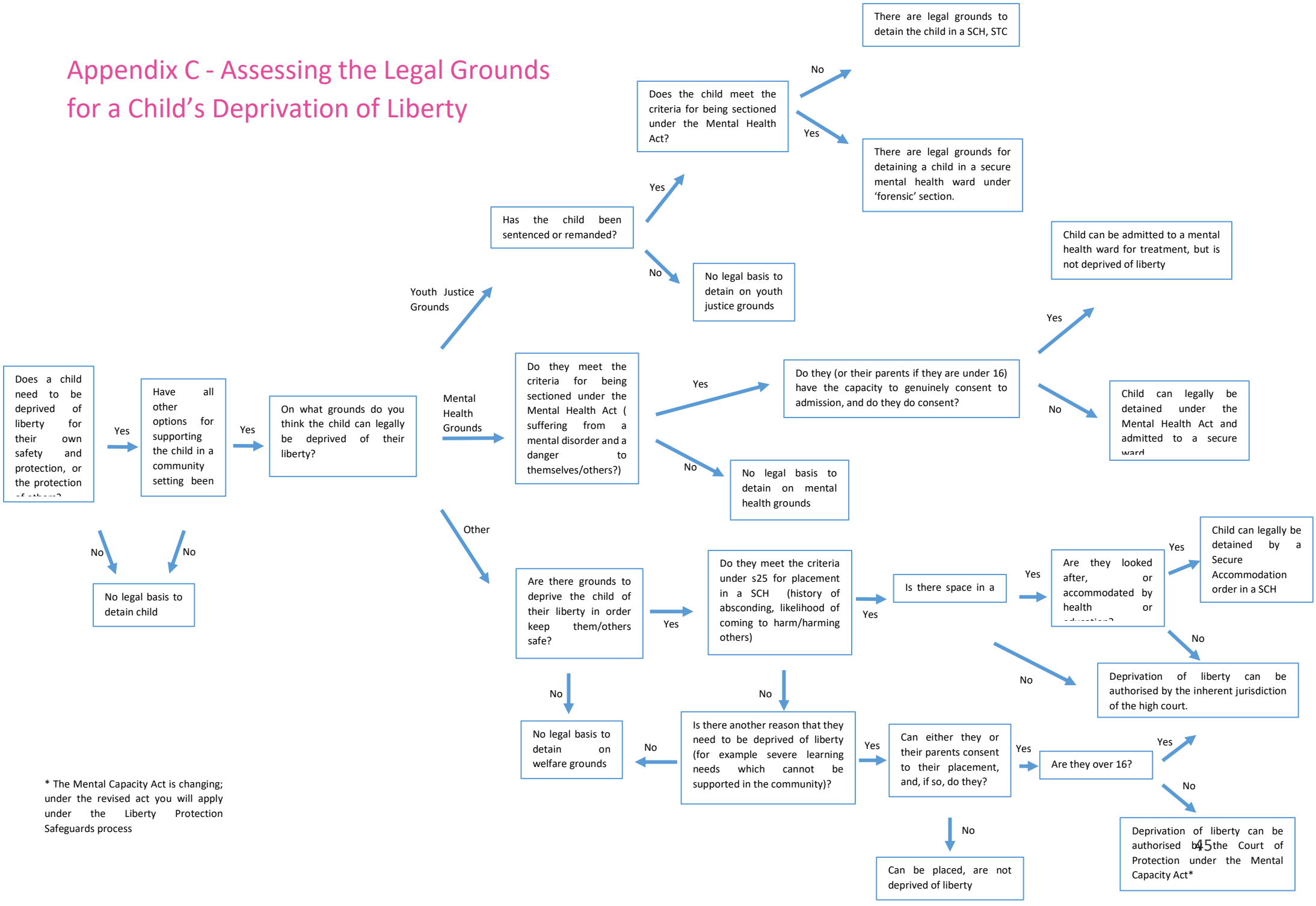
Setting Type	Institution Name	HMIP Safety Rating	Beds
YOI	Cookham Wood	Not Sufficiently Good	188
YOI	Feltham	Reasonably Good	180
YOI	Werrington	Reasonably Good	128
YOI	Wetherby	Not Sufficiently Good	288

Setting Type	Institution Name	Ofsted Rating	Beds
STC	Medway	Requires Improvement	67
STC	Oakhill	Requires Improvement	80
STC	Rainsbrook	Requires Improvement	76

Appendix B – Summary of Numbers of Children Detained

	Mental Health Units	Welfare Grounds	Secure Children's Homes, Youth Justice Grounds	Secure Training Centres	Young Offender Institutions
Overall number	**505** *March 2018, NHS monthly statistics*	**87** *March 2018, DfE Annual Statistics*	**99** *March 2018, DfE Annual Statistics*	**169** *March 2018, MoJ Monthly Statistics*	**605** *March 2018, MoJ Monthly Statistics*
% under 16	**32%** *NHS annual statistics on MHA detentions, for 2017-18 year*	**58%** *March 2018, DfE Annual Statistics*	**28%** *March 2018, DfE Annual Statistics*	**49%** *October 2018, MoJ Monthly Statistics*	**0%** *October 2018, MoJ Monthly Statistics*
% female	**66%** *NHS annual statistics on MHA detentions, for 2017-18 year*	**56%** *March 2018, DfE Annual Statistics*	**10%** *October 2018, MoJ Monthly Statistics*	**10%** *October 2018, MoJ Monthly Statistics*	**0%** *October 2018, MoJ Monthly Statistics*
% BAME	**20%** *NHS annual statistics on MHA detentions, for 2017-18 year*	**Unknown**	**21%** *NHS survey, September 2016*	**51%** *October 2018, MoJ Monthly Statistics*	**50%** *October 2018, MoJ Monthly Statistics*
% previously LAC	**44%** *NHS survey, September 2016*	**88%** *NHS survey, September 2016*	**37%** *NHS survey, September 2016 (includes SCH YJ placements)*		
% parent	**Not available**	**Not available**	**Not available**	**10%** *HMIP survey, 2016-17*	
% mental health concern	**100%**	**59%** *NHS survey, September 2016*	**41%** *NHS survey, September 2016 (includes SCH YJ placements)*		

Appendix C - Assessing the Legal Grounds for a Child's Deprivation of Liberty



* The Mental Capacity Act is changing; under the revised act you will apply under the Liberty Protection Safeguards process

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