

**Prisons &
Probation**

Ombudsman
Independent Investigations

Learning lessons bulletin

Complaints investigations | Issue 8

Complaints from young people in custody

This learning lessons bulletin explores learning from investigations into complaints from those under the age of 21. It includes cases involving those young people under 18 held in Secure Training Centres (STCs), and Young Offender Institutions (YOIs), as well as those aged 18-21 held in YOIs.¹

Foreword

This publication looks at investigations into complaints from young people² in custody. My office receives a disproportionately small number of complaints from those aged under 21 and I have previously published a learning lessons study exploring the reasons why there are so few complaints received from this group.³

Despite their small number, complaints from young people include some serious allegations about their treatment. As a result, these investigations have identified some important lessons which, if implemented, could ensure fairer treatment and the appropriate tailoring of some ostensibly adult custodial procedures to young people.

This bulletin focuses on three aspects of the management of young people in custody: adjudications, use of force, and segregation. Adjudications are the internal disciplinary procedures in YOIs. They are essentially designed for adult prisoners and can be confusing and intimidating for young people. The bulletin emphasises the important role that advocates can play in ensuring a fair hearing.

Use of force on young people must always be a last resort. There are no completely safe restraint methods and even approved techniques can be applied incorrectly. The bulletin emphasises the importance of camera footage, face to face debriefing with the young person and a proper investigation to consider whether force really was reasonable, necessary and proportionate. These things are important in assuring that lessons are learnt from incidents and that force is only used appropriately.

Staff have to manage occasionally challenging behaviour by young people but sometimes a range of separating and segregating procedures are used, the combined effect of which can be unnecessarily oppressive. The bulletin makes clear the need for fair, consistent and effective approaches to modifying attitudes and behaviour.

Learning the lessons in this bulletin would contribute to greater safety and fairness in the treatment of young people in custody.

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Background

The Prisons and Probation Ombudsman (PPO) receives a disproportionately small number of complaints from those under 21⁴. In June 2016, there were 5,349 young people under 21 years old in custody, 6% of the custodial population.⁵ But between April 2011 and September 2016, only 278 complaints⁶ were made to the PPO by individuals known to be under 21. This accounts for just 1% of all complaints received by the PPO.

A slightly higher proportion of complaints from young people were accepted as eligible for investigation compared with those from adults (54% compared to 44%). A number of cases examined for this bulletin were submitted on behalf of young people by third parties such as Barnardos and the Howard League. This support may help to explain the fewer number of ineligible cases amongst this group as advocates may ensure that the young person has completed the internal complaints procedure prior to submitting a complaint to the PPO.

Complaints about property make up the largest category of complaints to the PPO from both those over and under 21. However, complaints received from young people include a higher proportion of complaints about staff behaviour, home detention curfew and adjudications. In comparison, adults had higher proportions of complaints about administration and probation.

Adjudications

Adjudications are the internal disciplinary hearings conducted in a YOI⁸ when a young person is charged with breaking the YOI Rules. The process is very similar to that in adult prisons, and complaints about adjudications are one of the most frequent types of complaint the PPO receives from young people.

If a young person is found guilty at an adjudication hearing, various punishments may be imposed, including loss of earnings, removal of privileges, segregation (for those over 18) and removal from unit (for those under 18). Although the youth estate holds a very small proportion of the total population in custody, it has a relatively high proportion of proven adjudications⁹ compared to the adult estate.

Fig 1.1: Top five categories of complaint received between April 2011 - September 2016 from those under the age of 21:⁷

| | | |
|-----------------------|----|-----|
| Property | 71 | 26% |
| Staff behaviour | 42 | 15% |
| Adjudications | 37 | 13% |
| Home detention curfew | 21 | 8% |
| Probation | 14 | 5% |

Fig 1.2: Top five categories of complaint received between April 2011 - September 2016 from those aged 21 and over:

| | | |
|-----------------|-------|-----|
| Property | 5,066 | 20% |
| Administration | 3,070 | 12% |
| Staff Behaviour | 1,988 | 8% |
| Probation | 1,761 | 7% |
| Adjudications | 1,432 | 6% |

This bulletin examines the findings from complaint investigations relating to those under 21 conducted by the PPO. It aims to identify learning for the services in remit, to contribute to improved safety and fairness for this vulnerable group. While the relatively small numbers of investigations involved make it difficult to identify broad, over-arching themes, there are some recurrent concerns and areas of learning.

When the PPO considers complaints about adjudications, our role is not to rehear the evidence but to satisfy ourselves that the adjudicator followed the proper procedures, made sufficient inquiry into the young person's defence to ensure a fair hearing, and imposed a proportionate punishment.

Most of the concerns we identify in complaints about adjudications from young people are the same as those in complaints from adults. However, it is particularly important that young people, who may lack experience of adjudications, have support if they need it to ensure they understand the adjudication process and the charge against them. This support may be provided by legal advisers (solicitors who provide advice but do not attend the hearing), legal representatives (solicitors who

attend the hearing to present the case on the young person's behalf) or a McKenzie friend (someone, usually an advocate, who attends to support the young person - their attendance must be approved by the adjudicator). With adults, the onus is on the prisoner to ask for assistance if he or she wants it, but Prison Service Instruction (PSI) 47/2011¹⁰ says that young people should be encouraged to request help from an advocate. For those under 18, PSI 08/2012¹¹ also stipulates that adjudicators must give due regard to the age, maturity and individual circumstances of the young person; and that every young person must have access to the Independent Monitoring Board (IMB) and the Advocacy Service.

Adjudicators do not have to agree to a request for assistance but, if they refuse, they need to record their reasons. Our investigations have found that adjudicators do not always do enough to ensure that young people have the support they need during an adjudication hearing, as the case of A illustrates:

Case study 1

A complained that he had been wrongly found guilty of damaging his cell at an adjudication. The PPO investigation looked at whether the adjudicator provided sufficient encouragement to A to seek assistance and whether the adjudicator had considered the evidence available before making a finding.

The adjudicator had ticked the box on the record of hearing to indicate that A understood the charge and did not ask for legal advice or assistance. Paragraph 2.16 of the PSI says that young or vulnerable people, who may lack experience of adjudications, should be encouraged by the adjudicator to request help from an advocate. There was no evidence in the record of hearing that A was encouraged by the adjudicator to request help from an advocate. We were told during our investigation that A had declined assistance, but there was no record of this. Without a record, there was no evidence that this is what had happened.

The adjudicator's record fell short in other respects as well. The adjudicator must assess the evidence and decide whether the charge has been proved beyond reasonable doubt. In this case, the adjudicator's reasons for not accepting A's defence and finding the charge proved were not explained on the record of hearing.

We recommended that the adjudication should be quashed, and that the Governor should remind all staff that adjudicators should encourage young people to request help from an advocate and make a complete record of the hearing.

Lessons to be learned

Lesson 1:

When a young person is facing an adjudication hearing, they should be encouraged to seek advice from an advocate. This should be recorded in the Record of Hearing. If the young person declines assistance, this should also be recorded.

Use of force

Young people in custody can be extremely challenging to manage. There has been an increase in the number of assaults on staff members in young people's establishments and the 18-21 prison population has also seen a rise in recorded violence.¹² To meet these challenges, the National Offender Management Service (NOMS) developed a new behaviour management and restraint system - Minimising and Managing Physical Restraint (MMPR) - for use within under 18 YOIs and STCs. This aims to provide secure estate staff with the ability to recognise young people's behaviour, and use de-escalation and diversion strategies to minimise the use of restraint.

It also sets out a number of physical restraint techniques which take account of the likely size differences between young people and adult staff and are designed to minimise the risk of injury.

The MMPR guidance makes it clear that the use of force on a young person must always be viewed as the last available option. Staff must assess all the available options for managing an incident (for example, de-escalation techniques and verbal communication) before using force, and must be able to demonstrate why force was necessary, reasonable and proportionate. Staff in STCs cannot use force for reasons of good order and discipline or security.¹³

Between April 2011 and September 2016, the PPO received 43 complaints from those under 21 about staff behaviour¹⁴, including 21 complaints about the use of force. Although this is a relatively small number, staff behaviour accounted for 15% of all complaints received from those under 21 in that period. This compares to only 8% of complaints from those over 21. These complaints are among the most serious that the PPO investigates, and it is a significant concern that we upheld seven complaints about the use of force and recommended disciplinary action against staff in two cases.

Our investigations into complaints about the use of force have highlighted concerns about the techniques used to restrain young people, the need to de-brief after a restraint, and the adequacy of local investigations when complaints are made. The case of B illustrates all of these concerns.

Case study 2

B complained that staff had assaulted him during a restraint at a STC when he was 17, and that his complaint had not been investigated properly.

Our investigation found that B was blocking a door and preventing other young people from leaving the unit. The CCTV showed that staff spent several minutes trying to de-escalate the situation and persuade B to move, but he refused. A member of staff then stood between B and the door to allow the other young people out. At this point, the CCTV showed that B lashed out and then pushed the members of staff. The staff then initiated force on B.

We were satisfied that the staff had dealt with the situation in a very patient and professional manner, and that the use of force was reasonable and necessary to prevent harm. However, we were concerned that a head hold was used incorrectly which could have been dangerous. In addition, part of the restraint took place in an area not covered by CCTV - and this is when B said that staff assaulted him. Although there was insufficient evidence for us to say that this had been done deliberately, or that B had been assaulted, we were concerned that there had been a pattern of restraints taking place

'off camera' at the STC. We were also concerned that B had not been de-briefed after the incident, as he should have been, and that the investigation into his complaint by the Local Authority Designated Officer (LADO) was insufficiently thorough and challenging.

We were pleased to learn that the STC had since introduced body-worn video cameras which should help to overcome the problem of restraints taking place in areas not covered by CCTV. We recommended that the member of staff who had used the head hold incorrectly be given advice and guidance. Although the LADO¹⁵ is not in our remit, we sent a copy of our report to the LADO to highlight our concerns about the local investigation. The adequacy of local investigations into serious complaints by children and young people remains a concern and was also highlighted by HM Inspectorate of Prisons in their report on the implementation of MMPR.¹⁶

Lessons to be learned

Lesson 2:

It is sometimes necessary to use force on young people but there are no completely safe restraint methods. It is therefore essential that, when force is used, staff use the correct techniques. Camera footage should be used to review incidents and identify any concerns and areas for improvement. Any concerns must be addressed directly with individual members of staff.

Lessons to be learned

Lesson 3:

Where body-worn video cameras are available they should be used to record spontaneous incidents where force is used. For any pre-planned use of force, hand held video cameras should be used to record the incident.

Lessons to be learned

Lesson 4:

Any use of force is likely to be painful and distressing for young people. It is, therefore, essential that a face to face de-brief takes place afterwards that focuses on the young person's experience.

Lessons to be learned

Lesson 5:

Local investigations into the use of force should address the key questions of whether it was reasonable, necessary and proportionate.

Segregation and removal from unit

The policy on the segregation of young people in YOIs¹⁷ is set out in Prison Service Order (PSO) 1700. This provides that young people may be segregated for reasons of Good Order or Discipline (GOOD) or for their own protection, or while they are awaiting an adjudication. Those between 18 and 21 years old may also be segregated as a punishment following an adjudication hearing.

Those under 18 may not be segregated as a punishment, but may receive a punishment of removal from unit (RFU). While subject to RFU, the young person must take part in normal compulsory regime activities including work, education, physical education and training with other young people, but will be held in a room away from his/her 'home' wing or living unit for the remaining time. Adjudicators must ensure that RFU does not become segregation under another name.

The PSO makes it clear that young people must be segregated only when absolutely necessary and that segregation must always be accompanied by a strategy of intervention through advice and counselling.

There is no public record of the total number of young people in segregation or how many incidents of segregation there have been. As a guide between January 2016 and March 2016 there were 1,074 punishments of removal from unit (RFU) or segregation (cellular confinement) following adjudications for those under 21.¹⁸

PSO 1700 notes that research into the mental health of prisoners held in solitary confinement that, for most, it has negative effects on their mental health and well being.¹⁹ This is likely to be particularly the case for young people and it is important that when they are segregated it is only when absolutely necessary and that measures are put in place to safeguard their mental health. The case of C highlights a number of concerns about the segregation of young people that emerge from our investigations on the issue.

Case study 3

C complained that he had been segregated inappropriately at a YOI when he was 17 years old and that he had not had access to a full regime while he was segregated. Our investigation found that C's behaviour was extremely challenging and that he posed a genuine risk to other boys and to staff. We recognised the difficulties for the YOI in trying to manage his behaviour. We were satisfied that the periods C spent in the segregation unit were justified and were in accordance with the YOI Rules and PSO 1700.

However, we were concerned that it was impossible to establish exactly what regime C had access to when he was not in the segregation unit. Because of his behaviour he was subject to a complex mix of behaviour management plans, single unlock, IEP levels and privilege losses following adjudications. There was no single record that showed how much time he had out of his room each day, what access he had to association and purposeful activities, or what privileges he enjoyed. We were concerned that there could, therefore, be a risk that he was effectively subject to segregation or RFU without having gone through due process.

We were also concerned that the YOI's various local policies on segregation, IEP and behaviour management were poorly drafted and difficult to understand and that, as a result, it was possible that there were inconsistencies between them. Finally, we were concerned that the YOI did not appear to have an intervention strategy in place to help C learn to modify his behaviour.

Lessons to be learned

Lesson 6:

The segregation of a young person must always be accompanied by a strategy of intervention to support the young person in understanding and modifying their behaviour.

Lessons to be learned

Lesson 7:

Local policies on segregation, IEP and behaviour management must be clear and consistent with each other.

Lessons to be learned

Lesson 8:

When young people are subject to complex regime restrictions as a result of challenging behaviour, it is essential that time out of cell, association, privileges and access to purposeful activities are recorded in a single document to ensure that young people are not effectively subject to segregation or Removal from Unit without due process.

Endnotes

1. The PPO's remit covers secure training centres (STCs) and young offender institutions (YOIs) for investigations into both deaths and complaints. It also includes secure children's homes (SCHs) for investigations into deaths, however since this is a complaint focused bulletin there will be no further reference to SCHs.
2. Terminology differs between the establishment types, however for the sake of consistency, under 21s are referred to throughout this publication as young people irrespective of where they are held.
3. PPO (2015) *Why do women and young people in custody not make formal complaints?*. Available online: http://www.ppo.gov.uk/wp-content/uploads/2015/03/Why-do-women-and-young-people-in-custody-not-make-formal-complaints_final.pdf#view=FitH
4. *Ibid.*
5. The number of under 21s in custody has been calculated by adding those in STCs to those identified as under 21 in prison population but excluding those identified in SCHs as these do not fall within the PPO's remit. Ministry of Justice (2016) *Population Quarterly*. Available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541229/population-q1-2016.xlsx
6. Under 21s are defined as the age of the young person was at the time the PPO received their complaint. However, in approximately 11% of complaints received over this period, the age of the complainant was not recorded. As a result, the total number of complaints from under 21s may be slightly under-reported. All complaints from STC residents were included, even if the exact age was not recorded, as all STC residents are 18 and under.
7. There will be some categories which are not applicable for under 18s, such as the Probation category; as a result, caution should be taken when comparing the under 21s and over 21s tables.
8. Young people in YOIs can also be subject to Minor Reports for lesser offences. Adjudications do not take place in STCs.
9. Between January 2016 and March 2016 15- 20 year olds made up 6% of the prison population and accounted for 19% of the proven adjudications during the same time period. Ministry of Justice (2016) *Adjudication Quarterly*. Available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541530/adjudication-q1-2016.xlsx
10. Prison Service Instruction (PSI) 47/2011: Prisoner Discipline Procedures
11. Prison Service Instruction (PSI) 08/2012: Care and Management of Young People
12. Ministry of Justice and Youth Justice Board (2016) *Youth Justice Statistics 14/15*. Available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495708/youth-justice-statistics-2014-to-2015.pdf Ministry of Justice (2016) *Safety in Custody Statistics Bulletin*. Available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562897/safety-in-custody-bulletin.pdf
13. Youth Justice Board (2014) *Minimising and Managing Physical Restraint (MMPR) Data Collection*. Available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368350/minimising-and-managing-physical-restraint-data-collection.pdf
14. When complaints are received the PPO classifies them into structured categories. The 'staff behaviour' category, covers complaints about the use of force and inappropriate language or treatment by staff, among other things.
15. Local Authority Designated Officer (LADO) or the specified person or team in the local authority are notified of and investigate allegations about harm by a member of staff or volunteer towards children.
16. Her Majesty's Inspectorate of Prisons (2015) *Behaviour Management and Restraint*. Available online: <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/11/Behaviour-management-and-restraint-Web-2015.pdf>
17. PSO 1700 does not apply to STCs. They are governed by STC Rules 1998, YJB national guidance and local establishment policies.
18. Ministry of Justice (2016) *Adjudication Quarterly*. Available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541530/adjudication-q1-2016.xlsx
19. Prison Service Order (PSO) 1700 – Segregation.

Lessons to be learned

Lesson 1

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Lesson 2

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Where body-worn cameras are available they should be used to record spontaneous incidents where force is used. For any pre-planned use of force, hand held video cameras should be used to record the incident.

Lesson 4

Any use of force is likely to be painful and distressing for young people. It is, therefore, essential that a face to face de-brief takes place afterwards that focuses on the young person's experience.

Lesson 5

Local investigations into the use of force should address the key questions of whether it was reasonable, necessary and proportionate.

Lesson 6

The segregation of a young person must always be accompanied by a strategy of intervention to support the young person in understanding and modifying their behaviour.

Lesson 7

Local policies on segregation, IEP and behaviour management must be clear and consistent with each other.

Lesson 8

When young people are subject to complex regime restrictions as a result of challenging behaviour, it is essential that time out of cell, association, privileges and access to purposeful activities are recorded in a single document to ensure that young people are not effectively subject to segregation or Removal from Unit without due process.

The Prisons and Probation Ombudsman investigates complaints from prisoners, young people in secure training centres, those on probation and those held in immigration removal centres. The Ombudsman also investigates deaths that occur in prison, secure training centres, immigration detention or among the residents of probation approved premises. These bulletins aim to encourage a greater focus on learning lessons from collective analysis of our investigations, in order to contribute to improvements in the services we investigate, potentially helping to prevent avoidable deaths and encouraging the resolution of issues that might otherwise lead to future complaints.

PPO's vision:

To carry out independent investigations to make custody and community supervision safer and fairer.

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