Children's Rights Alliance for England

PRESS RELEASE
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High court issues damning judgment on 'widespread unlawful use of restraint' in child prisons run by G4S and Serco

> *The children and young persons sent to [secure training centres] were sent there because they had acted unlawfully and to learn to obey the law, yet many of them were subject to unlawful actions during their detention. I need, I think, say no more* – Mr Justice Foskett

In a judgment handed down this afternoon (11 January), a High Court Judge says it is highly likely that large numbers of children were unlawfully restrained in secure training centres (STCs) for at least a decade (1998-2008). Furthermore, none of the statutory agencies charged with monitoring children's care took action to stop the unlawful treatment. The Youth Justice Board is particularly criticised, with Mr Justice Foskett noting the organisation's *'apparent active promotion'* of unlawful restraint – due to its *'confused thinking'* which was evident until 2007. It was not until the inquest held that year into the death of 14 year-old Adam Rickwood at Hassockfield STC that YJB officials acknowledged their understanding of the law had been wrong. It was this child's death, alongside the death following restraint of 15 year-old Gareth Myatt at Rainsbrook STC, also in 2004, which led to information coming into the *'semi-public domain'* about unlawful restraint.

Mr Justice Foskett says the *'fullest explanation'* has not yet emerged as to why the widespread abuse of children's rights went unchecked for so long and why there were apparently so few complaints from child victims of unlawful restraint. He says the Children's Rights Alliance for England (CRAE), which brought this legal action to try and force the Ministry of Justice to make contact with past victims, *'has served well the interests of those for whom it is concerned by shining a light into a corner that might otherwise have remained in the dark'* and characterises the decade-long abuse of children in custody as *'to say the least, a sorry tale'*.

Despite this overall scathing assessment, Mr Justice Foskett rejected arguments made by lawyers acting for CRAE that the Government is under a <u>legal</u> obligation to identify potential victims and notify them of their right to seek compensation. CRAE argued there are two groups of potential victims – those children who were restrained for "good order and discipline" in breach of the legal rules governing restraint; and those children who were subject to the "distraction techniques" other than in extremely grave situations. These approved techniques, which have subsequently attracted strong criticism from the United Nations, the European Torture Committee and parliamentarians on the Joint Committee on

Human Rights, involved staff inflicting a sharp blow to the child's nose or ribs or yanking back their thumb. Adam Rickwood was subject to the "nose distraction" hours before he killed himself leaving a note in his room asking what gave staff the right to hit a child in the nose. It took former Labour Ministers more than three years after Adam's death to suspend this barbaric method of controlling children.

The High Court Judge was not prepared to develop common law by building on the long-established rights of victims to access justice by requiring the state to proactively assist them (albeit in a relatively limited way). CRAE argued the unique facts in this case supported such a development: the extreme vulnerability of incarcerated children; the oppressive culture of unlawful restraint; and the omissions and commissions of the authorities leading to an unlawful regime going unchecked for at least a decade. Mr Justice Foskett himself observed that children subject to unlawful restraint *'would simply have accepted it as part and parcel of the routine'* and noted a channel for complaints is important *'but if, in reality, it leads nowhere, then there is no effective access to what is at the end of the channel'*. But he feared ordering the Ministry of Justice to take the action urged by CRAE could have a *'springboard'* effect resulting in similar future claims on behalf of children in local authority care or hospitals or even on behalf of vulnerable adults.

The Judge concluded: *'If any such change of culture is to take place it would, as it seems to me, be something that should emerge in a more considered way than by way of a piecemeal development of the common law designed to meet what may seem to be a strong case on the merits'*. Whilst not ordering Ministers to take action, Mr Justice Foskett recommends they, at least, consider '*whether something ought to be done*' to remedy past wrongs:

Merely because the action of disseminating the relevant information is not required by the law does not mean that there is no obligation to consider whether some action is necessary if only as a matter of good and fair administration. The fact that those potentially affected were vulnerable children and young persons would, in my judgment, at least dictate the need for the Defendant to consider whether something ought to be done.

The Judge suggests justice could be achieved through victims of unlawful restraint coming forward, noting: '*It probably requires just one former detainee, looking back at his or her experience in an STC and having conducted the necessary preliminary inquiries, to pursue a well-publicised claim and others will be alerted to the potential of pursuing matters*'.

Carolyne Willow, CRAE's National co-ordinator, says:

We are, of course, deeply disappointed that the judge did not order the Government to inform potential victims of unlawful restraint of their right to seek compensation. But the plain truth is that this is the only civilised course of action now open to Ministers and the

YJB in the face of such a devastating judgment. It would simply be scandalous for them to continue to deny the extent or gravity of rights violations and the failure of the state to protect children when they were at their most vulnerable – locked up and away from their families.

CRAE is considering whether to appeal to the Court of Appeal.

Mark Scott, Partner at Bhatt Murphy Solicitors and solicitor for CRAE, says:

It was only following the inquests into the deaths of Gareth Myatt and Adam Rickwood – two children who died in custody – that the shameful and unlawful practices in privately run STCs were exposed. In bringing this case CRAE has, in the words of the judge, shone "a light into a corner which might otherwise have remained in the dark" by highlighting the full extent of the illegality and the large numbers of children who were unlawfully restrained. It is distressing that vulnerable children in the custody of the state can be treated in this manner. I hope that this judgment will encourage children who were subject to unlawful restraints by STC staff to come forward and seek redress.

Anyone concerned about an unlawful restraint in an STC prior to August 2010 can contact CRAE at restraint@crae.org.uk or Bhatt Murphy at mail@bhattmurphy.co.uk or call 020 77291115.

ENDS

Contact: Carolyne Willow, National co-ordinator, mobile 07949 434 787.

Notes

1. The case was heard by Mr Justice Foskett at the Royal Courts of Justice 22-24 November 2011.

2. There are four privately-run secure training centres (STCs) run by two private companies – Serco and Rebound ECD which is part of G4S – on contract to the Youth Justice Board. The first STC opened in April 1998.

EXTRACTS FROM JUDGMENT

'A SORRY TALE'

Leaving aside any conclusion that may be drawn in due course about what the court could or should do about all this, it is, to say the least, a sorry tale. The children and young persons sent to STCs were sent there because they had acted unlawfully and to learn to obey the law, yet many of them were subject to unlawful actions during their detention. I need, I think, say no more. **[Para 78]**

EXTENT OF UNLAWFUL RESTRAINT

… there can be little doubt that from the outset the policy and the rules consequent upon that policy prevented physical restraint from being used to maintain GOAD[1], whether or not a distraction technique was applied in the restraint process.

Although it did not emerge publicly for some years, it seems clear that this policy and the rules reflecting it were not observed universally throughout the STC system. The first manifestation of evidence in written form about this, albeit evidence not put into the public domain until 2007, was the report in October 2004 of Mr David Waplington, the former Head of the Juvenile Panel of the Prison Service. Following the deaths of Adam Rickwood and Gareth Myatt … he produced a report to the YJB in which he reviewed behaviour management in STCs. **[Paras 43 and 44]**

I do not think that there is any true or realistic alternative to the conclusion (a) that probably up until July 2008 (and possibly, though unlikely, for another two years thereafter) there was widespread unlawful use of restraint within the STC system and many children and young persons were subjected to such restraint and (b) that very few, if any, of those who were subject to such unlawful restraint appreciated at the time that it was unlawful. **[Para 91]**

… during a fairly prolonged period … restraint techniques were used in these STCs for unlawful purposes. **[Para 6]**

… I do not think that there is any sensible conclusion other than that it is highly likely that a large number [of children] were indeed the subject of unlawful force at times during their detention, probably from the beginning of the STC regime until at least July 2008. **[Para 76]**

… the position concerning the legality of using restraint on detainees was established clearly from the outset: it was dealt with in the rules to which each STC was subject and provided for expressly in the contracts by which each of the Interested Parties [G4S and Serco] in this application were bound to run the STCs for which each was responsible. It is, however, clear from the evidence … that the practice "on the ground" for a good number of years was that restraint techniques <u>were</u> used to maintain GOAD in each of the STCs. **[Para 33]**

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[1] Good order and discipline.

Given the evidence put before the Carlile Inquiry…, it would seem that even at a time when Oakhill [STC] was not at full capacity, the number of PCC[2] interventions across the four STCs during that period was running at about 350 per month. Even if only 20-25% (which may be conservative) of such interventions were to enforce GOAD, there can be little doubt that a large number of detainees were treated unlawfully at various times during this period. There is no reason to suppose that the situation was materially different at any other time in the history of the STCs at least until July 2008. There is other evidence in the material before me … that distraction techniques … were also used as a regular part of the repertoire of force used in STCs… If used as part of a restraint for GOAD, a painful (and often injury-producing) technique would have been used for an unlawful purpose. **[Para 77]**

… Figures relating to Hassockfield STC for the period January-December 2004 and January-December 2005 have been provided, breaking down the reasons for the use of restraint as between “non-compliance” and “other” reasons. The figures were presented in the form of a bar chart and the precise numbers are a little difficult to discern. However, for present purposes total accuracy is unnecessary. Broadly speaking, looking at, for example, the six-month period from March to August 2004, of the approximately 570 reported instances of restraint at Hassockfield, about 185 were recorded as having been for “non-compliance”. In the same period for the following year, of the approximately 470 instances of restraint, in the region of 200 were attributed to non-compliance. **[Para 69]**

STILL UNRESOLVED

… it would equally be difficult to say that the fullest explanation has yet emerged for the way matters turned out as they did and why such little complaint seems to have been made about what does appear to have been the widespread use of unlawful force over a prolonged period. **[Para 181]**

If any such change of culture is to take place [in relation to notifying victims of violations of their rights] it would, as it seems to me, be something that should emerge in a more considered way than by way of a piecemeal development of the common law designed to meet what may seem to be a strong case on the merits. **[Para 119]**

… there would seem to be little doubt that the vast majority of restraint techniques that were employed [in Hassockfield STC] during this period for GOAD were not made the subject of a complaint. That pattern was presumably mirrored in the other STCs. **[Para 87]**

Merely because the action of disseminating the relevant information is not required by the law does not mean that there is no obligation to consider whether some action is necessary if only as a matter of good and fair administration. The fact that those potentially affected were vulnerable children and young persons would, in my judgment, at least dictate the need for the Defendant to consider whether something ought to be done. **[Para 199]**

[2] Physical Control in Care – the authorised system of restraint in STCs.

It remains to be seen whether … some of those who were the subject of unlawful restraint emerge to challenge and pursue what took place when they were detained. **[Para 228]**

HIDDEN NATURE OF ABUSE

… there is little doubt that until the two tragic deaths in 2004 nothing concerning the use of unlawful restraint emerged even into the semi-public domain of those who inhabited STCs, either as members of staff or as detainees. The families of the two boys concerned will have wanted answers and it is right to say that it was not for several years that the full, coronial process concerning both boys was completed. **[Para 125]**

FAILURE OF STATE TO PROTECT CHILDREN

It is also a legitimate comment that until the deaths of Gareth Myatt and Adam Rickwood, and the investigations and inquiries that resulted from those deaths, none of the agencies in place to monitor what took place within an STC had identified and/or acted to stop the unlawful nature of what was happening. **[Para 79]**

… there is no escaping from the conclusion that the "monitoring" of the STCs by the YJB appointed monitors during the period certainly up to mid-2004 failed to identify and/or act in relation to the unlawful use of force in the way subsequently revealed to have taken place. Given the "confused thinking" … and, as part of that, the apparent active promotion by the YJB of the proposition that restraint for GOAD was legitimate, it is, perhaps, not surprising that this should have been so if, of course, the existence of the unlawful practices had been noted at all. **[Para 81]**

I do not think there can be any doubt that the systems in operation did not identify the widespread unlawful use of restraint that occurred… **[Para 117]**

… the existence of the [YJB's] confused thinking reinforces the proposition that had any detainee complained about his or her rights concerning the use of restraint, the answer given may well have been that the staff were perfectly entitled to use it for the purposes of enforcing GOAD **[Para 56]**

POWERLESSNESS OF CHILDREN

There is no issue that the children and young persons who may have been affected by the matters that arise in this case were potentially very vulnerable. **[Para 5]**

Whatever legal foundation there may be for the argument in favour of the relief sought, no court would wish to – or would wish to be seen to – reach a conclusion in a case relating to vulnerable children and young people that in any way prevented the revelation to them of actions taken in respect of them by the State which either were or may have been unlawful. **[Para 112]**

… I do not think that there can be any doubt that in the vast majority of cases the detainees made the subject of a restraint technique would simply have accepted it as part and parcel of the routine in an STC. Furthermore, at least during the period with which this case is concerned, it is likely that if a complaint had been made, the substantive answer to

it would have been that the officers who used the restraint techniques were justified in using the force considered necessary at the time. **[Para 88]**

The existence of a channel [for complaints] is, of course, important but if, in reality, it leads nowhere, then there is no effective access to what is at the end of the channel. **[Para 85]**

There is, of course, also the inevitable reluctance that there would have been on the part of a young detainee to "rock the boat" by making a complaint. That reluctance is evidenced by the unchallenged statement put before me in these proceedings from Sir William Utting whose distinguished career involved, amongst other things, service as the Chief Social Work Officer with the DHSS from 1976 to 1985 and then as Chief Inspector of the Social Services Inspectorate for the DHSS (subsequently the Department of Health) from 1985 to 1991. In his statement he said this:

> "Another practical problem for the potential complainant (as it may be for staff in moments of crisis that require immediate action) is being able to distinguish between what the regulations permit and what they do not. Many have uncomplainingly submitted to ill-usage in the past because 'that is what goes on in these places' and they believe that what members of staff do is always authorised. The difficulties are even greater in institutions in which a culture of illicit violence such as bullying exists, when ill-treatment by staff appears insignificant in comparison. Self-reporting is not a reliable source of evidence about the incidence of violence in institutions. One returns inevitably to the need for clear and simple guidelines, proper recording and reporting, aggregated information, and responsible managerial and external scrutiny."

A statement from Ms Camila Batmanghelidjh, the founder of two children's charities, the 'The Place2Be' and 'Kids Company', also contributed another insight into how the complaints procedures would be viewed by young detainees when she said this:

> "7. Children in custody rely for their daily wellbeing on prison staff. As young people have developmental affiliative needs, they are more likely to be in a situation where they have a parental transference, seeing prison staff as parental figures on whom [they are] reliant. In view of the immense power discrepancies between the jailed child and the prison staff, it is likely that children will develop a compliant and fearful attitude towards these adults, often not daring to challenge them because they believe them to be all powerful. In this context children can experience prison staff as not following complaints procedures because they are 'powerful enough' not to. Children may also perceive complaints procedures being followed through but in the end they are not ruled in favour of the children.

8. In this way, the reputation for the uselessness of the complaints procedure spreads amongst the kids. Whilst at one end of the spectrum the complaints procedure is considered futile, at the other end children fear revenge, believing that if they make complaints their 'lives will be made hell' in custody."

[Paras 89 and 90]

FUTURE CLAIMS

It probably requires just one former detainee, looking back at his or her experience in an STC and having conducted the necessary preliminary inquiries, to pursue a well-publicised claim and others will be alerted to the potential of pursuing matters. I have not been told of any difficulties that an individual former detainee would face in making a [Freedom of Information Act] request about whether he or she is recorded as having been the subject of restraint for GOAD. (The records still exist at the moment because part of the Defendant's response to this claim is the disproportionate amount of time it would take to trawl the records to identify those who may have been affected.) Any affirmative answer to such a request might (not, I emphasise, necessarily would) open the door to making a claim for redress. **[Para 139]**

… on the basis that the most likely cause of action for any detainee who was restrained unlawfully would be a claim for personal injuries (including psychological damage) based upon an assault or series of assaults, the 3-year primary limitation period will not start running until he or she is aged 18 and then there is scope and extension of that period, either by virtue of section 14 or section 33 of the Limitation Act 1980, if the circumstances permit. **[Para 121]**

The kind of issues that might arise have already been considered by the courts in cases involving the long-term effects of child abuse… **[Para 122]**

RISK OF YJB DESTROYING RECORDS

… given the circumstances in which a court may (not necessarily will) extend the time for making a claim for personal injuries … beyond the normal 3-year time limit after the event or events in question (or 3 years after the age of 18 if the event or events took place before the age of 18), the YJB (which Ms Dyson says in her witness statement is currently drafting a new data retention policy) may wish to consider that policy carefully. As presently drafted, it could involve the destruction of certain records six years after the 18th birthday of a former detainee sentenced to a total of three months or over or after one year from the date of discharge or the last action on file (whichever is the latest) in respect of any other young person received into custody (either on remand or after conviction). The YJB may wish to bear in mind when formulating its new policy that the continued availability of the records of trainees detained in each STC until July 2010 at the latest … may be as important to defending an unwarranted allegation of unlawful restraint as it is to establishing that an alleged incident took place. **[Para 229]**

'SHINING A LIGHT'
The Claimant has served well the interests of those for whom it is concerned by shining a light into a corner that might otherwise have remained in the dark. **[Para 228]**

LEGAL BAR ON CRAE BRINGING A CASE LIKE THIS THROUGH THE HUMAN RIGHTS ACT
Given the serious nature of the issues raised concerning young and vulnerable individuals, it would seem strange that a reputable charity such as the Claimant should not be entitled to come to court and raise the kind of issues raised. Equally, had one "victim" been found who had sought to bring his or her own claim, the Claimant would undoubtedly have been entitled to be joined as an interested party and make the kind of submissions made on its behalf to me. Indeed Mr Hermer[3] made the forceful point that it would be absurd to suggest that the Claimant is prevented from challenging the rationality and lawfulness of the Defendant's refusal to act because it is not a 'victim' when the whole point of the application is that the individual victims do not know that their rights have been violated. **[Para 213]**

[3] Richard Hermer QC Alex Gask and Stephen Broach from Doughty Street Chambers and Mark Scott of Bhatt Murphy represented CRAE in the High Court.