

# Children 'At Risk' in Secure Accommodation

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## Abstract

In the UK, some children who are deemed to be 'at risk' of significant harm in the community are incarcerated in local authority secure accommodation under child welfare legislation, together with young people convicted or accused of serious criminal offences. The deprivation of the liberty and the rights of this group of children is justified on the basis of what is considered to be in their 'best interests', and their placement together with young offenders is defended on the basis that young people who have committed crimes are also vulnerable and could be assessed as 'children in need'. This article will review the literature and question the legitimacy of secure accommodation as it is currently constituted to provide protective custody for children at risk in the child welfare system.

**Key Words:** children, secure accommodation, significant harm

## Introduction

In the UK, some children and young people who are deemed by their parents or carers and local authorities to be 'at risk' in the community are detained in secure accommodation under the Children Act 1989 in England and Wales and on the authority of a Children's Panel in Scotland. Locking up children in any circumstances is an extreme step and should only be used as a last resort and for the shortest appropriate time (UNCRC 1991), and yet this phrase has the effect of glamorising incarceration, making the deprivation of liberty somehow more acceptable in that it can be justified as in the 'best interests' of the child. However, it is 'incarceration nonetheless' (Chesney Lind 1978:190) and this approach conceals a complex pattern of control, in some cases as harsh as that in the criminal justice system and carries with it all the risks and poor outcomes which are associated with custody. Girls are more vulnerable than boys to detention in secure accommodation 'for their own protection': more than three quarters of the girls, but only one quarter of the boys in secure units in England are admitted because they are 'at risk', providing clear evidence of the gendered nature of the definition and assessment of 'risk' (DfES 2004).

In recent years local authority secure accommodation in England has been transformed from secure children's homes operating within a welfare philosophy, to the more orthodox youth justice provision which is 'offender-based' operating within a philosophy of control. It is now part of the 'secure estate' managed by the Youth Justice Board

(introduced by the Crime and Disorder Act 1998) and this is reflected in the make-up of the secure unit population with almost 80% admitted through the criminal justice system on remand or convicted of serious crimes (DfES 2004). This article will review the literature and draw on findings from research undertaken by the author firstly to examine the experience in secure accommodation and the outcomes following release to determine whether it is really in the 'best interests' of children 'at risk' to deprive them of their liberty and their rights; and secondly to question the legitimacy of local authority secure accommodation as it is currently constituted to provide 'protective custody' in the child welfare system.

## Background

Secure accommodation is provided by councils with social services responsibility for children and young people in the child welfare and criminal justice systems. It is defined by the Children Act 1989 as 'accommodation provided for the purpose of restricting liberty' although it relies for its authority on both civil and criminal statute. It has been described as occupying 'a unique and ambivalent midpoint on the treatment-punishment continuum' (Dennington 1991:90) and 'straddling the conceptual space that awkwardly separates the child welfare and youth justice systems' (Goldson 2002:9). Its complexity lies in the diverse range of children and young people held together in the secure units, and the different civil and criminal powers and legislation under which they are detained (Harris and Timms 1993, Gabbidon and Goldson 1997). Secure accommodation is better resourced than most forms of residential care and custody and places are expensive in comparison with other institutions.

Notwithstanding its ambiguous and controversial status, and the concerns about its use which have been expressed by academics, policymakers and practitioners (for example Millham and others 1978, Cawson and Martell 1979, Stewart and Tutt 1987, Kelly 1992, Hodgkin 1995, O'Neill 2001, Goldson 2002) secure accommodation has expanded and consolidated its position in the youth justice and child welfare systems. In the 1980s government grants to local authorities facilitated an expansion of secure accommodation to meet the needs of 'difficult' and 'more challenging' children in a way that was not considered possible in mainstream residential care (Goldson 2002), and further substantial expansion followed developments in youth justice policy in the 1990s, for example to provide for the anticipated increase in demand for secure accommodation resulting from the abolition of penal remands for children (Section 60 Criminal Justice Act 1991), although this was never implemented, and to meet the increased need for security following amendments to sentencing and remand criteria introduced by the Criminal Justice and Public Order Act 1994. These developments produced a 60% increase in secure accommodation provision.

The changes in criminal justice policy and legislation and child welfare policy which began in 1992 and have continued to gather momentum since 1997, have resulted in soaring numbers of children and young people in custody (Warner 2001), with the sharpest increases among girls and children under 15, and a widening of the net of those likely to be locked up. Commentators have long argued that 'improvements in the quality of residential care should considerably reduce the levels of need for secure accommodation' (Millham and others 1978:52) but the contraction of residential care for young people in the same period has resulted in fewer and less specialized homes, with little opportunity explicitly to match and address the needs of those placed in them. Cawson and Martell (1979:145) noted that the expansion of secure accommodation served to 'generate demand', with the need for it justified on the basis of its use rather than its value or effectiveness and Millham and others (1978:45) described it primarily as 'a safety valve for the system' of residential child care, with the demand for its

use associated with the inadequacy or unavailability of community placements rather than the needs of 'difficult' children.

Secure accommodation as it is currently constituted contains a mixed population of children admitted under Children Act 1989 because they are 'in need of protection', unconvicted children on remand and children convicted of a range of offences, spanning the age range 10 – 18 years, and most units accommodate both boys and girls. Children convicted of certain grave crimes sentenced to long term detention, and those sentenced to Detention and Training Orders (Powers of Criminal Courts (Sentencing) Act 2000) will serve, or commence their sentences, in secure accommodation if they are female, under 16 or considered to be vulnerable. This practice violates international standards which provide that 'accused persons shall, save in exceptional circumstances be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons' (International Covenant of Civil and Political Rights) and Rule 17, UN Rules for the Protection of Juveniles Deprived of their Liberty which states that 'untried detainees should be separated from convicted juveniles'. Furthermore the Committee on the Rights of the Child has strongly criticised the mixing of unconvicted and convicted children in closed institutions in other countries (Children's Legal Centre 2006).

In the UK, this practice is justified on the basis that all these young people will, in all probability have experienced adversity and disadvantage (Boswell 1996, O'Neill 2001) and those admitted through the criminal justice routes are vulnerable and as much 'children in need' as those admitted 'for their own protection' (Goldson 2002). However, not only is the practice illegal, but the justification for it is based almost entirely on the similarities in the children's backgrounds and histories and is therefore too simplistic. In the light of evidence of the importance of differentiation between young people and the need for 'disaggregation of the population' (Bullock et al., 1998), a more complex analysis is required which recognises the similarities but also takes account of the important differences in their presenting difficulties, reasons for admission to secure accommodation and in the risk factors, problems, needs, 'career route' and likely outcomes, in addition to age, ethnicity and gender (Hodgkin 1995, Howard League 1995, Timms 1995, Brogi and Bagley 1998, Farmer and Pollock 1998, O'Neill 2001, Lees 2002).

## Child welfare system

The majority of children and young people who are detained in secure accommodation 'for their own protection' have already been looked after by local authorities, either accommodated with the consent of their parents or subject to care orders: indeed being 'looked after' itself constitutes a high risk factor for admission to secure accommodation, through the welfare route for girls (Hodgkin 1995, O'Neill 2001) and through criminal justice routes for boys. It is well known that children looked after by local authorities have experienced personal adversity and structural disadvantage (Bebbington and Miles 1989) even before they become 'looked-after' and that they are consequently vulnerable and 'in need'. Class, race and gender are significant factors in determining which professional system a child enters (Malek 1993), and 'having a social worker and being in care are things which tend to happen only to the poorest people (Aymer et al 1991: 97). Such children need care settings which will promote their resilience and strengthen the protective factors in their lives (Rutter 1989), rather than compound their vulnerabilities.

There are now almost equal numbers of boys and girls 'looked after' by local authorities (DfES 2004) but traditionally boys have been in the majority and the different needs of girls have

been neglected: this is significant as girls form the majority of those admitted to secure accommodation through the child welfare system. Girls' admission to care is rarely due to serious criminal behaviour and is more likely to result from problems in family relationships (including violence and abuse), family or professional concerns about 'moral' welfare and health issues, particularly the use of drugs and/or alcohol (Worrall 1999). Unlike boys, girls often request their own admission to care as an escape route from abuse and emotional pressures at home (Hudson 1989) and they are more likely than boys to be 'looked after' as a result of the divorce of parents, particularly as they have more difficulties adapting to step-families and to have more conflicts with step-fathers than their male peers (Berridge and Brodie 1998, Fombonne 1996). For many young people, particularly girls, home is not a safe place and behaviours such as going missing usually indicate something is seriously wrong. Ironically such young people are still frequently described as being 'beyond control' and their behaviour labelled pathological, even though going missing may be an appropriate response to an abusive adult or situation, albeit one that exposes them to new risks associated with survival in a hostile environment. Involvement in petty criminality such as begging and shoplifting is an almost inevitable consequence for young people who live and sleep in unsafe places, but of more concern is the vulnerability to violence, sexual exploitation, including prostitution and ill-health. Although there are no significant gender differences in the number of young people who go missing, this behaviour is more likely to result in heavy interventionist responses with girls than with boys (Wade and others 1998), although it is notable that government guidance on children going missing fails even to mention gender (SEU 2002).

## Residential care

Although there has been a decline in the number of children's homes, residential placements continue to be the most common option for teenagers looked after away from home, particularly those who are described as presenting 'challenging behaviour' or are labelled in some other way as 'difficult to manage' (Rowe and others 1989, Kendrick 1995, Triseliotis and others 1995, DH 1996, Sinclair and Gibbs 1996). There are limited options for matching children's needs with the most appropriate provision, and homes will frequently accommodate boys and girls, children who abuse with the victims of abuse and different categories of offender with non-offenders, despite recommendations that some groups should not be accommodated together (DH 1991, Green and Masson 2002). For many young people, such placements not only fail to meet their needs or provide the required protection but also expose them to the risks of further violence, sexual abuse, involvement in offending and drug use which can result in their incarceration. Some residential homes have been found to have a criminal peer culture increasing the risk of offending (Wade and others 1998): a recent study found that 40% of young people admitted to residential care without any previous caution or conviction received one if they stayed in the home for six months or more (Sinclair and Gibbs 1998). Peer violence, bullying and exploitation have been found to be serious problems (Berridge and Brodie 1998, Farmer and Pollock 1998, Sinclair and Gibbs 1998, Cawson and others 2004) and residential care presents a high risk of sexual violence, particularly for girls by male peers, and initiation into prostitution by peers within and outside the residential home and by paedophiles, drug dealers and pimps (O'Neill and others 1995, Shaw and Butler 1998, Farmer and Pollock 1998, Green and Masson 2002, Cawson and others 2004). A matter of particular concern is the normalization and acceptance of peer sexual abuse within residential settings with 'denial and invisibilization' (Green and Masson 2002: 156) the most common staff response to sexuality with disastrous consequences in terms of sexual abuse. Staff uncertainty about what constitutes 'peer sexual abuse' and what is normal sexual experimentation compounds the problem and leaves children, particularly girls highly vulnerable and confused, and young sexual abusers continuing to present a risk to others.

Issues of sexuality in residential care have been found consistently to be mishandled and staff responses to be reactive and punitive, 'dictated by ignorance, fear, embarrassment and the staff's own moral values, including their views around gender and sexuality' (Green and Parkin 1999: 181). Both male and female staff blame girls for any sexual activity, colluding with the myths about girls' provocativeness (Green and Masson 2002) and reflecting the widespread use of the double standard in relation to sexuality. While boys' sexuality is invisible and boys are not seen either as potentially abusive or at risk of abuse, girls' sexuality is punished and controlled (Parkin and Green 1997) and in the predominantly masculine cultures of some residential homes girls are subjected to male sexual aggression and exploitation (Berridge and Brodie 1998).

Other problems for looked after children which have been well-documented are associated with education (Fletcher Campbell et al 2003, SEU 2003), with the majority leaving school with no educational qualifications; health needs have been neglected with low priority afforded to routine medical care, including sexual health (DH 1997) which is of concern given the disproportionate number of young women who become pregnant whilst being looked after (Biehal and others 1992); and young people in care have been found to have mental health needs which are greater than those in the general population of the same age (Howard League 1995, Berridge and Brodie 1998, Farmer and Pollock 1998, Sinclair and Gibbs 1998).

Inappropriate and inadequate placements which inevitably break down result in instability as the young people move from one home to another attracting additional professional labels in the process, which serve to confirm their status as 'difficult to manage', although it has been found that many of them are not in reality 'difficult' (Berridge and others 2003). Young people who have established a pattern of going missing often continue to do so from inadequate or abusive residential homes (Abrahams and Mungall 1992, Stein and others 1994, O'Neill 1999) and such young people, particularly girls, are at high risk of admission to secure accommodation 'for their own protection' (Harris and Timms 1993, Hodgkin 1995, O'Neill 2001) 'not least because the solution to the persistent breakdown of the institutional solution is, almost always, further institutionalisation' (Aymer 1991: 97).

## Secure accommodation

The criteria for admission to secure accommodation in the child welfare system, which have been described as 'opaque' (Littlewood 1996) are set out in s.25 Children Act 1989: the young person has a history of absconding and as a consequence they are likely to suffer significant harm or cause harm to others. An application for an order must be made to the Family Court, but a child can be deprived of their liberty in secure accommodation for up to 72 hours without any external validation of their placement.

It is clear from the statistics that the assessment of what constitutes 'significant harm' varies according to gender, with substantially more girls satisfying the criteria, largely on the basis of sexual risk or self-harm (DfES 2004a), and these girls will, 'almost without exception, [be] drawn from deprived working class families' (Aymer et al 1991). Sexuality is central to the definition of risk in relation to girls and professional intervention with most girls results from concerns about their sexual behaviour, or because they are not conforming to the expectations of femininity (Carlen 1987). Hudson (1984) argues that intervention is legitimated on the basis of girls' need for protection, but that hidden beneath the 'welfare as protector' discourse lies a fear of the young woman who is sexually active. Little attention is given to the reasons why young people go missing and many professionals use secure accommodation as the ultimate solution to running away and its associated risks even though it has been shown to be in-

effective. The forced return of young people only results in them running away again (Browne and Falshaw 1998, O'Neill 2001), and it is now persistently used for girls involved or suspected of prostitution, although staff find girls involved in prostitution difficult to manage, lack the knowledge and skills to be able to work with them, are anxious about the dangers of recruitment of other young people in the unit (Jesson 1993, O'Neill 2001), and the high probability is that they will return to prostitution as soon as they leave secure accommodation (Hodgkin 1995, O'Neill 2001): its main value is perhaps in providing professionals with respite from troublesome young people, that is a 'safety valve for the system'. Placement in secure accommodation is something of a lottery, frequently determined by bed availability: it is not necessarily the most dangerous, self-harming or vulnerable young people who are placed in security, but often those who fail to fit in and conform anywhere else, or who are particularly challenging to staff and carers, and it has been shown that those in secure accommodation are not significantly different from those in non secure provision (Aymer and others 1991, Hodgkin 1995, O'Neill 2001, O'Neill 2001a).

Young people admitted to secure accommodation will find themselves in a 'total institution' (Goffman 1961), isolated from the wider community, where the emphasis is on control and surveillance and where they are deprived of privacy and individuality. Although they are secure children's homes in name, they conform to most of the features of 'total institutions' (Goffman 1961): the regimes and rigid routines produce an experience that is comparable to prison life and children, whatever the reason for their admission, talk about 'doing their time'. In fact, secure units are commonly regarded as prisons and commentators describe them as holding 'child offenders' (e.g. Davies 2004). While secure accommodation provides a preferable alternative to penal custody in a Young Offender Institution, it does not provide a therapeutic environment or even in many cases the type and minimum quality of care needed by vulnerable children who have been determined by the courts to be 'at risk' of significant harm. The provision of therapeutic services is inconsistent and subject to disputes between secure units, placing authorities and specialist services about funding, demarcation in responsibilities and timescales for assessment and intervention. At best, it provides a temporary relief from the risks in the community and the opportunity to address health needs, although in practice these are often accorded low priority (O'Neill 2001).

In the heightened political and professional focus on child offenders, children who are in custody specifically because they have been identified as 'at risk' have become invisible, and are now indistinguishable from their offender peers. This public face of secure accommodation is reflected within the units, with little or no differentiation between young people, or individual focus on the different needs and issues of the children 'at risk' who are becoming increasingly marginalized, representing only 1 in 5 of the population. In practice, it has been shown that the only way that units can accommodate together children and young people with such different needs and interests is to take a generic approach, focusing on the similarities between them and treating them all the same (O'Neill 2001). In recognition of this situation, secure units have been encouraged to define their role more clearly and be more explicit about what they offer and who they can help rather than continuing the 'we take all comers' approach (Rose 2002: 191).

These children experience the loss of their liberty and the placement in secure accommodation as a punishment, no matter how professionals attempt to reframe it more positively, but they also suffer the additional stigma and acute sense of injustice of being 'criminalized' and labelled offenders when they are not, and treated in the same way as their peers who have committed serious crimes. But even more crucially secure accommodation as it is currently constituted and operated does not provide the safe environment and protection from harm which is the very reason for which they are admitted. These young people, particularly girls, will encounter some of the same risks as they did in the community, and some new risks, but

within a culture which minimizes the likelihood that they will disclose the peer violence, bullying sexual intimidation and abuse which occurs (O'Neill 2001), and where their ability to protect themselves is restricted, leaving them defenceless in potentially harmful situations. Whilst it is acknowledged that many offenders in secure accommodation are also vulnerable with complex backgrounds, the significance of the population mix in terms of the risks presented by some violent and abusive young people to their peers must not be ignored. Hodgkin's analyses (1993, 1995) continue to reflect the current situation: 'one unit can contain those convicted of rape and assault, together with the victims of rape and assault, highly aggressive young people with very withdrawn, depressed self-mutilators and potential suicides, drug abusers, young people engaged in prostitution, persistent runaways' (1993: 306), 'dangerous and violent children and those who have committed extremely serious offences' (1995: 4).

In this context girls are especially vulnerable: they are in the minority, forming less than one third of the population (DfES 2004) and most of them are deemed to be in need of protection from the risks of sexual abuse and/or involvement in prostitution, violence and deliberate self-harm. As single gender units for girls have almost disappeared, most girls are now placed in male dominated mixed-gender units which, it is argued, provide a more normal living environment. This is despite evidence that while boys benefit from mixed-gender placements, girls are frequently disadvantaged as their needs are subjugated to those of the boys, and they are at risk of sexual intimidation (Gabbidon 1994, Hodgkin 1995, Berridge and Brodie 1998, O'Neill 2001, Cawson and others 2004). The sexual double-standard and mishandling of issues of sexuality found in residential care (Green and Masson 2002) and in foster care (Farmer and Pollock 1998) is also evident in secure accommodation, with care staff ill-prepared to work with children on sexual issues and often colluding, knowingly or inadvertently, with sexist attitudes. This is significant given the very high proportion of children in secure accommodation who have been sexually abused, and/or have sexually abused others. Girls are commonly blamed for any sexual activity, stereotyped as 'dangerous' particularly if they are known to have been sexually abused or have been involved in prostitution, and they are subject to greater levels of control and surveillance than boys. These problems for the children are compounded by the stereotypical gender roles and unequal power relationships between male and female staff (O'Neill 2001, Goldson 2002). In contrast with an almost equal gender balance in residential care, female staff are in the minority in secure accommodation, and as well as sharing responsibility for the boys with their male colleagues, are expected to take responsibility for the girls, both protecting them from predatory males, and their male colleagues from the 'dangerous girls' (Aymer 1992, O'Neill 2001) reinforcing rather than challenging many of the negative stereotypes about male and female roles and myths about sexuality. It has been found that many male staff avoid engaging with girls, who are widely considered by both male and female staff to be more difficult to work with than boys (O'Neill 2001), but this also reveals an ill-preparedness to deal with some of the frequently occurring behaviour presented by girls, such as deliberate self-harm which staff find threatening because they lack the theoretical and emotional understanding to know how to respond. Practice commonly relies on surveillance, control, physical restraint and the use of sanctions, such as removal of property and isolation in a bare cell. Whilst these practices may restrict children's ability seriously to injure themselves at the time, they do not *stop* the self-harming behaviour; indeed it is evident that the experience of incarceration makes it worse for some young people, particularly girls, leaving them even more vulnerable than before (Hoghugh 1978, Hodgkin 1995, O'Neill 2001). Furthermore, they do nothing to address the needs and issues underlying the self-harm, but rather have been shown to reinforce young people's sense of guilt, shame and self-destructive intent and negatively to affect their prospects of longer-term recovery (Hodgkin 1995, O'Neill 2001).

In considering whether it is in the best interests of children 'at risk' to be held in protective custody, the length of placement is an important factor and it has been shown that children

can suffer serious psychological damage and are at risk of institutionalisation from longer-term placements (Bullock and Little 1991). Children in the welfare system can be held in secure accommodation for up to three months on a first application and up to six months on subsequent applications, and many find their first placements extended with further orders made by the courts because alternative non-secure accommodation is not available. Unlike their peers who will usually have determinate criminal sentences or periods of remand, children in protective custody live with greater uncertainty and are also disadvantaged by much less clear planning and little by way of preparation for release.

Furthermore, consideration needs to be given not only to their experiences in the units, but also to secure accommodation's effectiveness in promoting good outcomes for children by reducing or removing the risks to enable them to return to live safely in the community. It has been argued that the loss of liberty is worthwhile if the placement in secure accommodation improves children's chances of a better life. However, it is known that in the absence of suitable community alternatives, on release children frequently return to the same circumstances and risks from which they were admitted, and consequently many children, particularly girls, experience multiple admissions finding themselves in a 'revolving door' between unsuitable community placements and secure accommodation, reflecting the failure of both to meet their needs. There is very little reliable evidence of the short-term outcomes for children 'at risk' leaving secure accommodation and what is known is not at all encouraging (O'Neill 2001), and even less is known about the longer-term effects (Bullock and others 1998).

## Conclusion

There is little evidence to support the view that incarceration in secure accommodation as it is currently constituted in the UK is in the best interests of children 'at risk'; on the contrary, what is known suggests that it is not only *not* in their best interests, but a denial of their rights, potentially oppressive (Myers and others 1999), against the principles of social justice and in violation of international standards. The practice of accommodating children 'at risk' together with unconvicted and convicted offenders should be reviewed as a matter of urgency. It seems extraordinary, given the high value placed on freedom in the UK that the liberty of some of the least powerful, most vulnerable children in society is not safeguarded more assiduously. Whilst further research is undoubtedly needed, particularly to examine both short and longer term outcomes, current policy and practice must be underpinned by the existing knowledge, and demonstrate a renewed commitment to children's rights and principles of social justice. Incarcerating children 'at risk' in a criminalized environment is not defensible, most of all to the children who are locked up, such as Gemma, a 14 year old sexually and physically abused, self-harming girl held in a male-dominated secure unit, far from family and friends, where she is contained, under surveillance, restrained, bullied, sexually tormented and assaulted by her peers and deprived of any privacy, but perhaps worst of all, where her needs are not being met, who asks 'in *whose* best interests'?

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