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Even if it is legally defensible, does that make it morally right? Children explore the use of physical restraint in custody

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March 2015

School of Applied Social Sciences

Thesis submitted to Durham University for the degree of Doctor of Philosophy.

There can be no keener revelation of a society's soul than the way in which it treats its children.

Nelson Mandela, 1995

For my Dad

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Abstract

Custody for children is inherently unsafe, with evidence of harmful and unsafe care. Thirty three children have died in custody in England and Wales in the past decade. This study argues that the way children are treated once incarcerated reflects the way that children, childhood and child offenders are conceptualised, perceived and controlled. The routine use of physical restraint as a response to challenging behaviour has been called into question. It has been declared at the very least controversial, unsafe and in some cases unlawful. Taking a children's human rights approach this piece of participatory research, explores the use of physical restraint across the secure estate in England, from the perspective of children themselves. Over one hundred children (11-18ys) took part, some as researchers themselves and others as participants. Spaces were created which encouraged the authentic and distinctive voice of children, which lies at the heart of the study. Their contemporaneous experience makes this research unique.

Evidence is provided which demonstrates that, although distressing and often painful, in most cases children consider its use to be inevitable and justifiable. These daily acts of violence inflicted on children were not considered unusual given children's experiences of everyday violence within their families, communities and other institutions. Children are unaware of their right not to be subjected to inhumane and degrading treatment. The research suggests that the existence of a rights framework within the secure estate is negligible.

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Chapter 1

Setting the Scene

1. The focus of this research

Custody for children is an inherently unsafe environment (Goldson & Coles, 2005) with evidence of violence, bullying, racism, sexism and homophobia. There is evidence of the harmful effects of incarceration (Goldson, 2002; Lambie & Randell, 2013). Furthermore there is strong evidence that the children who are incarcerated are already living with mental health issues, domestic abuse, family breakdown, learning disabilities (Justice Studios, 2014), violence (O'Neill, 2001), communication disorders (Bryan et al., 2007) and have experienced significant bereavements (Vaswani, 2014). They are, arguably, some of the most disadvantaged and challenged children in society. Fionda (2005) argues that the labels attached to children are inherently negative and that the social construction of childhood in an 'adultist' society propagates the divide between what she describes as 'devils and angels'. Therefore labelling children who break the law as criminals (devils) and placing them in an environment which fails to either address their needs as children (angels) or to prevent further offending (The Howard League, 2012) is, in my view, highly questionable. Whether or not children should be locked up in penal institutions at all is questionable, although beyond the scope of this study. However, the way that children are treated once they are incarcerated is crucial and the routine use of physical restraint across the secure estate (Local Authority Secure Children's Homes, Secure Training Centres and Young Offender Institutions) is, in my

view, a damning indictment on the way that children are regarded, particularly children who come into contact with the criminal justice system.

By engaging with children using participatory research methods this study explored issues around the use of physical restraint with children who have been locked up. A total of one hundred and eleven children took part in the research, some as researchers and others as participants. The strength of children's voices makes this study distinctive and important.

Based on the evidence that was generated I argue that the use of physical restraint on children is indefensible from a rights perspective and also that it is ineffective. It doesn't work in terms of keeping children safe from harming themselves or others, and, furthermore, it exacerbates existing challenges that these children have faced during their lives. This includes childhood experiences of violence.

Currently there are 1,122 children in custody (YJB, July 2014) in England and Wales. There is evidence that physical restraint is used routinely and regularly across the secure estate. Chapter 1 sets out the legal framework within which the use of restraint is permissible.

The use of physical restraint on children in custody is at the very least controversial (BMA, 2014) with evidence that is has been linked to the deaths of children in custody (March 2013, House of Commons Justice Committee), evidence that there are no safe positions (Aiken et al., 2011) and a strong assertion that the use of pain compliance is unacceptable (NPM, 2013). Also, it clearly doesn't work in terms of keeping children safe. Evidence from The Howard League (2013) suggests that there are 23 incidents of physical restraint per day across the secure estate suggesting that it is not being used as a last resort or only when all other attempts have failed. Children in custody said that

they did not change their behaviour as a result of the threat of physical restraint (Gyateng et al., 2013). The negative, damaging and even fatal consequences of restraint are well documented (Goldson & Coles, 2005; Smith & Myers- Bowman, 2009; The Howard League, 2011).

Finally evidence of an explicit children's human rights framework within the children's secure estate is negligible. This research set out to explore issues around the use of physical restraint, from the perspective of children themselves. The research focused on juvenile offenders i.e. aged 10-17 as opposed to young offenders aged 18-21. Using a participatory research methodology, children were involved as researchers, research advisors and as research participants. All of the children involved in the Children's Advisory Group were under the age of 18. As co-researchers the children and I together explored experiences of physical restraint, the possibility of developing alternatives and also at some of the possible explanations for the continued routine use of restraint. These explorations were conducted through the lens of children's human rights.

This research also explores rights based research methodologies, creating spaces in which the child's voice could be expressed as well as investigating the continued use of physical restraint. The theoretical perspectives which underpin the choice of methodologies include a constructivist approach which acknowledges that concepts such as childhood, child offender, citizen etc. are socially constructed and that they alter in time, space and location. It also includes a critical realist approach which recognises the existence of multiple realities. It is how these constructed realities appear through the eyes of the child that the research explored.

This research attempts to explore the use of physical restraint on children in custody and about seeking alternatives using an explicit children's human rights approach.

Together with children I explored how physical restraint was experienced, how children understood it, whether or not they felt it was fair, effective or justifiable, and whether there might have been alternative ways of managing challenging situations.

1.1 Structure of the thesis

Chapter 1 - Setting the scene

Chapter 1 lays out the foundations for the research. It describes why the research came about and why it is important now. It explores my personal and professional interest in the areas of children's human rights, the experiences of children in custody and the significance of a participatory research methodology. The chapter also identifies why and how the research makes a contribution to existing research, practice and the current discourse in the field.

Chapter 1 will introduce some of the key themes that are explored in more depth in later chapters.

Chapter 2 - Literature review

Chapter 2, the literature review, sets the research in the existing academic context. Part I examine the conceptualisation of children and childhood and explores relevant issues including agency and capacity. It sets out children's human rights, the concept of a rights framework, looking at what rights are and the children's human rights agenda. Part II sets out the current issues within the field of youth justice, specifically within the secure estate and in relation to the use of physical restraint in custody. It explores the welfare versus justice debate, looks at the structure of the secure estate as it currently stands and outlines some of the important markers in the recent history of physical restraint within the secure estate.

The chapter identifies current findings as well as identifying gaps in our knowledge about children's experiences of custody and specifically the use of physical restraint. At the end of this chapter the research questions are reinforced.

Chapter 3 - So what is real?

Chapter 3 sets out the theoretical frameworks upon which the research is based and explores the ontological, epistemological and methodological basis for the research. It examines what is real, how we know it is real, what counts as knowledge in this field and whose knowledge it is. It will suggest that multiple realities exist and that children's realities are as relevant and important as adults. It also suggests that a participatory methodology opens up the possibility of connecting with children's reality in a way that adult driven methodologies alone have been unable to do and sets the scene for exploring the child's voice. The chapter discusses the significance of a constructivist and critical realist ontology, describes the influence of feminist approaches and an explicitly rights based agenda, and makes the argument for a participatory methodology.

In a piece of research conducted in a controversial and sensitive area of work with children the ethical issues are also set out and some of these are explored in detail.

Chapter 4 - Herding cats!

The research process will be explored in detail in Chapter 4 which includes information about the Children's Advisory Group (CAG), the construction of the Vignettes as a research tool and the importance of the research space that was created. It describes the ways in which the child's voice has been a fundamental part of the research process and describes some of the ethical, logistical and methodological difficulties that have been encountered. The CAG was created in early 2012 and fieldwork took place between July 2013 and August 2014.

This chapter will attempt to bring to life the various children who participated in the work and to make it 'real' to the reader and bring to the fore some of the complexities, nuances and different realities at play.

Chapter 5 – Exploring with children

Chapter 5 explores the main findings from each part of the research process and provides evidence from the analysis of the data that has emerged. It will begin to identify the main areas for discussion in the final chapter and lead to some tentative conclusions that will be fully explored there. It will begin to create a picture about the inevitability of physical restraint and at the ways it is experienced by children and by staff. Children describe what they have witnessed and what they have been involved in personally and create a picture about the realities of the secure environment.

The analysis looks specifically at the evidence that has been generated from the children themselves i.e. those who are or have been in custody and will explore the issues around use of restraint and at the possibility of developing alternatives. It will also put forward some of the evidence from the use of participatory methodologies and the importance of the child's voice which are developed in Chapter 6.

Chapter 6 - Spaces for participatory research

Chapter 6 will explore the significance of the research methodology that was used, the issues that emerged about the research space and about children's voice(s). It will examine some of the 'spaces' that were created in this study, and provides some reflections from members of the CAG.

Chapter 7 – Discussion and conclusions

The final chapter draws some conclusions and locates these conclusions within the theoretical framework that was set out in Chapter 3. Part I discusses conclusions

around the issue of the use of physical restraint in custody from a child's perspective and through the lens of children's human rights. It also makes suggestions about the alternatives that were put forward by children in response to the Vignettes but also as a way of describing their own experiences. Part II of this chapter discusses issues around the participatory methodology and the use of research space including feedback from the CAG. It will include reflections on the research as well as putting forward recommendations about research that is still to be done.

1.2 Explaining my use of language

The use of the terms 'child' or 'children' are used throughout this report to reflect the status in law of all under 18's within the Secure Estate who are defined as 'child' by the Children Act 1989 (Section 105) and The Children Act 2004 (Section 65). The definition of 'child' is also consistent with the current usage under the United Nations Convention on the Rights of the Child, 1989 (UNCRC). It is also a point of principle that endeavours to remind the reader that the children at the centre of this study are just that - biologically, politically, legally, morally and in terms of rights they are children. I am aware that its use grates in places and sits uncomfortably. This is deliberate and requires the reader to ask herself questions each time about why the term child is being used. The terms juvenile justice and youth justice are used generically although at all times this research is concerned with children involved in the criminal justice i.e. those under the age of 18.

Unless specified the generic term she rather than he will be used to denote both girls and boys.

The research focuses on practice within England. It is acknowledged that there are differences regionally across the UK with variations in Northern Ireland, Scotland and

Wales and that there are also different legislative frameworks and practices internationally. It was not possible to explore all of these areas within the scope of a PhD study although they may well be informative and influential.

I am also aware that there is a relevant discussion about prisoner's rights within the adult criminal justice arena. Similarly this is beyond the remit of this report but should be acknowledged.

Custody, in my opinion, is no place for children. Having said that this research will not examine the rights and wrongs of custody but will examine how children are treated once they are locked up. Whether or not children should be locked up at all is a subject for another debate.

No attempt is made to compare the different types of institution. Children themselves inevitably make comparisons when they have experience of more than one establishment. However there are differences in the way each organisation operates, different jurisdictions within which they are managed and they have different staffing, training and reporting requirements (Smallridge & Williamson, 2008). Comparisons between different establishments are, therefore, complex and similarly beyond the scope of this study.

I have deliberately not included any information about the personal circumstances of the children who were research participants. That is not relevant to this research. I was not interested in, or party to, any information about the circumstances of their arrest, the offences they had or were alleged to have committed or the reasons for their imprisonment. This was with the exception of one child for whom there were significant safeguarding issues which were appropriately brought to my attention although the specific details were not. This was necessary in order to keep him safe as well as the

members of the CAG that were visiting with me. Generally I was solely interested in children's experiences of custody and did not want to be drawn into any discussion about their personal circumstances or offending history.

I have not used the real names of the children who took part in the research in order to protect their identity. This is with the exception of members of the CAG whose real names are used, at their request.

Finally a comment on writing styles: I have chosen to switch between writing in the first person (for chapters which are directly about my experiences both generally and specifically during this study) and the third person (for chapters which set this study in a broader academic framework). I hope that this brings the text alive and makes the voice of children and the voice of the researcher more real and more accessible whilst also ensuring that the study has an appropriate degree of academic gravitas.

1.3 Introduction

As a researcher my own biography is relevant and important to my work. My personal interest in this area of work dates back to my childhood and to an emerging sense of social injustice and abhorrence to the idea of children being locked up. As a primary school child, from a middle class family living within the London commuter belt, my three sisters and I were members of the League of Pity. This organisation was established in 1891 as a children's fundraising arm of the NSPCC. I remember attending fundraising events for children who were 'less fortunate' than us. I had already been introduced to the idea of children as vulnerable and needy, to the idea of children as 'other', and also to class inequalities. As a teenager I became aware of, and joined the Howard League for Penal Reform, symbolising my allegiance to the campaign against the incarceration of children.

My professional interest in this area of work dates back to the early 1990's, when, as a qualified social worker, I started working in an alternative-to-custody project in the north-east of England. The project provided community alternatives to custodial sentences for children. Part of my remit was to set up and run a remand fostering scheme to provide an alternative to custody for children remanded by the courts.

Later in my career I spent several years working for The Children's Society as an Independent Person, providing an independent view as part of the formal complaints procedure for children. This included complaints about children's experiences in residential and foster care but also involved Secure Accommodation Reviews for children who had been placed in Local Authority Secure Children's Homes (LASCH).

Both of these roles gave me first- hand experience of working with children who were involved in the criminal justice system and who were placed in custodial settings. It provided an opportunity to see how such experiences impacted on some of the children whose life circumstances had already left them damaged and struggling to cope, and to see how often their experiences in custody exacerbated their difficulties.

During the late 1990's I was involved in co-delivering a training programme 'Protecting Rights in a Caring Environment' (PRICE) to staff within LASCH and observed the impact that this had on the staff and children where it was being implemented. The aim of the training was to help residential care staff to develop practice for managing challenging behaviour and minimising the need to use physical restraint with the children in their care. Whilst acknowledging that physical restraint is sometimes necessary to avoid serious harm, there are often other ways to intervene that prevent challenging situations getting out of control and necessitating the use of physical force.

In 1995 I was involved in setting up and working with a children's human rights project, Investing in Children, which asserts that children under the age of 18 (as defined by the United Nations Convention on the Rights of the Child, 1989) are citizens with rights. Our work has attempted to demonstrate that by implementing and respecting these human rights it is possible to provide effective services that meet the needs of all children including some of the most challenging and marginalised in society.

This research stems directly from my personal and professional experiences of working in this sector. I argue that by adopting a rights perspective the need to use physical restraint to address challenging situations for children in the secure estate (defined as Secure Children's Homes, Secure Training Centres and Young Offenders Institutions) could be minimised and that alternatives should be explored that would render it unnecessary.

1.4 An overview of the issues

The conceptualisation and status of childhood has led to an expanding agenda of research about children and childhood, a discourse around the sociology of childhood, and the promotion of specific investigation through childhood studies. This is not to suggest, however, that there is an agreed definition of childhood or that it is a straightforward and unproblematic issue. In the UK, for example, there is no agreement in law about the status of a child with different legal positions being relevant i.e. the minimum age of criminal responsibility is 10 years, the age of consent for sexual activity is 16, the age at which you can buy alcohol is 18 as is the age at which you can vote. Some public services are available up to the age of 16 after which an individual is referred to adult services for provision whilst other children's services continue to be provided up to the age of 18 or even 21 in some cases. Children are viewed variously as

lacking in maturity, competency and capacity and as dependent or conversely as responsible, accountable individuals who demonstrate agency. Children who break the law bring into sharp focus the differing perspectives on the status of child and concept of childhood and on the issue of rights.

The history of the English system of youth justice has been described as an oscillating contest between punishment and welfare and between deterrence and rehabilitation (Smith & Utting, 2011). It is possible to demonstrate how these competing views have impacted on attitudes, legislation and policies that have attempted to address youth offending. The history of research around the issues also reflects these competing themes. Recently, partly as a result of the children's rights agenda and of the associated growth in the child's perspective within the childhood studies arena, there has been considerable research conducted *on*, *with* and recently *by* children themselves using participatory methodologies (Fleming & Boeck, 2012; Tisdall, Davis & Gallagher, 2009). Whilst this has contributed to a broader and richer debate, what continues to be less explicit from the agenda is a rights perspective or a rights framework to underpin the discourse. Children's rights and children's human rights are discussed from a policy and legal perspective although rarely from a moral, ethical or fundamental perspective.

There has been a growing acknowledgement in the UK, as a result of national and international legislation (The Human Rights Act, 1998; The United Nations Convention on the Rights of the Child, 1989; The Children Act, 1989), that children have the right to express their views and to be involved in decision making processes that impact on their lives (Article 12, UNCRC). A great deal of the discussion and practice that has developed as a result of the raised profile and legislative foundations of children's rights, has centred on participation rights i.e. Article 12. As a result of this practice it is

also possible to demonstrate better outcomes for children who have been wholly involved in decision making about the services they receive and the circumstances in which they grow up (Badham & Wade, 2008). The benefits of participation are acknowledged to include benefits for children themselves, for services and organisations, as well as for the wider community (Shenton, 2004).

So whilst there has been greater attention paid to rights issues and a proliferation of participation projects, initiatives, guidelines and toolkits there are also conflicting positions. There is a contested debate about children's rights, and children's human rights including, for example, alternative views about the status of The United Nations Convention on the Rights of the Child (UNCRC). Lyons (2007), amongst others, makes the point that by ratifying the UNCRC governments signal an expectation that children's services and public services are expected to comply with the requirements but that they are not legally obliged. This lack of clarity about the status and, therefore, the potential impact of the Convention, results in confusion and raises questions about whether the UNCRC confers rights that are legally enforceable.

> However, the term 'ratification' merely indicates that the government has committed itself to treating the Convention seriously. Unless it is incorporated into law……then it is not part of the law of this country.
>
> Lyons, 2007, p148

There is, however, currently no shared language amongst academics, policy makers or practitioners, with a contested debate about the terms 'participation', 'consultation', 'engagement' and 'dialogue' as well as some confusion around the direct association between rights and participation;

> In the UK children and young people's participation is in a conceptual muddle.
>
> Jupp Kina, 2012, p321

My research sets out to explore a rights-based approach within a custodial setting, including the right to participation, and examines whether applying the same values and principles that are the foundations of participative practice, that similar benefits might emerge.

Within the field of children's involvement in the criminal justice system there is some evidence of an emerging rights discourse and an interest in the right to participation (Goldson, 2005; NYA/LGA, 2011; Smith, 2010). There is also, for example, work on-going in Wales to introduce participation standards (NACRO, 2009) within the youth justice system. The Youth Justice Board had also commenced working on a participation strategy. However within this there is further evidence of confused thinking with terms such as 'engagement' 'participation' and 'consultation' used interchangeably and only a passing reference to a rights agenda.

> Throughout English youth justice policy there is no mention of participation as a human right.
>
> Hart & Thompson, 2009, p 11

In the arena of youth offending there are conflicting views about rights, often drawn into discussion alongside responsibilities and an assertion that children's rights are justifiably curtailed as a result of their behaviour or actions. For children whose behaviour brings them into conflict with local communities or with the state, their rights are often violated and there is greater tension with the argument that children's rights are human rights and are, therefore, universal and inalienable. This is particularly

problematic with children whose most basic right, the right to freedom, has been curtailed by restriction of their liberty or incarceration.

Evidence has emerged that clearly demonstrates improved outcomes and effectiveness for children who are involved in decision making (Hart, Newman & Ackerman, 2004: Khan, 1997; Shenton, 2004; Willow, 2002). Combined with conflicting evidence from the youth justice field about effective interventions, particularly the ineffectiveness of custody, now may be the time to look at alternatives that are grounded in evidence based practice from the field (Barry & McNeil, 2009; Goldson & Muncie, 2006; Smith, 2011) a rights-based approach and which directly involve children.

Research in the field of youth justice often focuses on: restorative justice; understanding offending (the personal attributes and social circumstances of offenders/offending); prevention; issues of gender, race or sexual orientation; the age of criminal responsibility; and the highly contested issue of 'what works?' There is also a growing body of evidence about children's experiences of being arrested, about being in custody and about their experiences when released. Research that explores issues associated with children in custody includes research about the use of physical restraint in custody (Morgan, 2004 & 2012; Steckley & Kendrick, 2008; User Voice, 2011). For the purposes of this study the definition of physical restraint is:

> …. restrictive physical intervention is defined as any occasion when force is used with the intention of overpowering or to overpower a young person.
>
> YJB, 2014, p3

There is a strong body of evidence that calls into question the use of custody for children (Jacobsen et al., 2010; The Howard League 1998; Tracy and Kemp-Leonard,

1996) suggesting that custody neither reduces the re-offending rates nor addresses the difficulties that children face. In fact, research indicates that custody may in fact increase and exacerbate the challenges both facing and posed by children involved in the youth justice system (Lambie & Randell, 2013).

1.5 Physical restraint in custody

The use of physical restraint is a complex issue, not least its use with children in custody. There is an argument that it is categorically wrong and should never be used, and the converse argument that it can be used in a caring and supportive way that makes children feel contained, safe and in control. There is something of a continuum which extends from the unlawful and unacceptable use of adult violence against children to safe holding and adult care. And within this there is the important issue of how it is experienced by children. There are complex and nuanced perspectives involved. My argument is not that it should never be used as clearly adults in children's prisons do have a responsibility for safety and security. However my argument centres on how it is currently used, the motivation behind it and the way that it is experienced and accepted by children.

Research concerning the use of physical restraint in custodial settings has historically been carried out by adult researchers (Hart & Howell, 2004) although there are examples of research that have focused on how children experience the use of physical restraint (Morgan, 2004 & 2012; Smallridge & Williamson, 2008) these studies will be referred to in more detail. Key messages, for example from The Smallridge and Williamson Review (2008) are that children accept that restraint may sometimes be justified, however that restraint is often chaotic, traumatic and stressful and that it can trigger complex responses.

During one of the My Space sessions one young man, Gary (aged 16), describes the tension between accepting the need for restraint whilst also feeling that the manner in which it is executed is difficult to deal with. His view that in some circumstances, such as when fights break out, the use of restraint is necessary suggests a level of acceptance. However the reality of being restrained by four officers, he suggests, is unpleasant and challenging.

> *You get what you deserve I suppose. Like if you're fighting. But when there's four of them on top of you it sort of does your head in.*
>
> Gary, aged 16

The Children's Rights Director for England, Morgan (2004 & 2012) investigated children's experiences of either having been physically restrained or having witnessed incidents. He reported that, frequently, the need for physical restraint was the culmination of a situation that had started some time before the actual event and, in their view, was often preventable.

> First, even if restraint has to be used because otherwise someone might be injured, **the problem that started it off is often something quite small that was not dangerous at all.** Small arguments about nothing much can build up into something dangerous enough for someone to need restraining.
>
> Morgan, 2004, p9

There has been little exploration about the impact of a rights-based approach to the use of physical restraint or discussion about whether or not physical restraint is acceptable from a rights perspective. There appears to be an acceptance of the need for physical restraint as a 'given' (see below) without the possibility of an alternative way of

managing challenging situations and behaviour or conducting the business of caring for children in custody.

One of the participants in the research within the LASCH, Terry aged 17, raised the issue about the apparent lack of interest in exploring alternatives when children in custody are struggling.

> *If they just let you have some space, you know just to kick off. I swear and shout when I'm aggravated and hit the walls. If they just let you be in the corridors by yourself then no one would get hurt and you would just calm down*.
>
> Terry, aged 17

The acceptance of restraint as a given is powerful. Bourdieu's (1984) concept of doxa is helpful here. He suggests that this lies behind people accepting something as a taken-for-granted assumption, or indeed as a given. Bourdieu's (1977) concept of habitus suggests that through continuous and routine involvement in a situation people acquire a set of predispositions to act and to see things in a certain way. People, he suggests, accept things without knowing. His idea of 'fields' as social and institutional arenas in which people reproduce their predispositions is also helpful. A field, according to Bourdieu, is a set of relationships, a network or structure which suggests that both context and environment can influence habitus. This is persuasive in the context of the apparent acceptance of the continued need to use physical restraint with children in custody. Children in custody, it could be argued, cannot see the possibility of a field without violence i.e. without the use of restraint.

This study attempts to contribute to the evidence about children's experiences of physical restraint (through the construction of Vignettes) and develop a rights based

discourse, about whether it is possible to minimise or even eliminate the use of physical restraint in custody. It also contributes to the current discourse on childhood (Corsaro, 2004; James & Prout, 1997), to the debate around justice/welfare (Smith, 2005) rights/responsibilities, 'devils' and 'angels' (Fionda, 2005) and it explores whether children who break the law should be viewed primarily as children or as offenders. By adopting an alternative view, in which children are viewed primarily as citizens with rights, this may alter the way that they experience the criminal justice system and specifically how they experience the use of physical restraint when in custody.

Historically, research within the criminal justice field has rarely been conducted using participatory approaches (Christensen, 2004) although there is practice emerging from organisations such as the NCB (2009), Howard League (2010 & forthcoming), and User Voice (2011) and there is also a recent commitment from the YJB to more inclusionary practice (2012). A report on violence in custody produced by CRAE (2012) provides evidence of a piece of research carried out *with* and *by* children with a Young Investigation Team being supported to conduct the research. My research also contributes evidence about participatory research methods, which are discussed further in Chapter 3.

1.6 Aims of the research

The aims of the research are as follows:

1. To explore challenging situations with children in the secure estate from a rights perspective.
2. Using participatory research methods children will explore:
    a. the potential of adopting a rights-based approach, and
    b. issues around the use of physical restraint

Using a variety of methods, including participatory research methods, (Christensen & James, 2000; Fleming & Boeck, 2012; Kellett, 2004 & 2010) the research involved

children themselves as both researchers and participants. Methods included: focus groups, interviews and developing Vignettes (Barter & Renold, 2000; Finch, 1987). Where possible, children were also supported to carry out some of the research activities. The CAG involving five children helped to shape, conduct and support the research. The CAG was involved in helping to shape the research questions, see **Diagram 1** below.

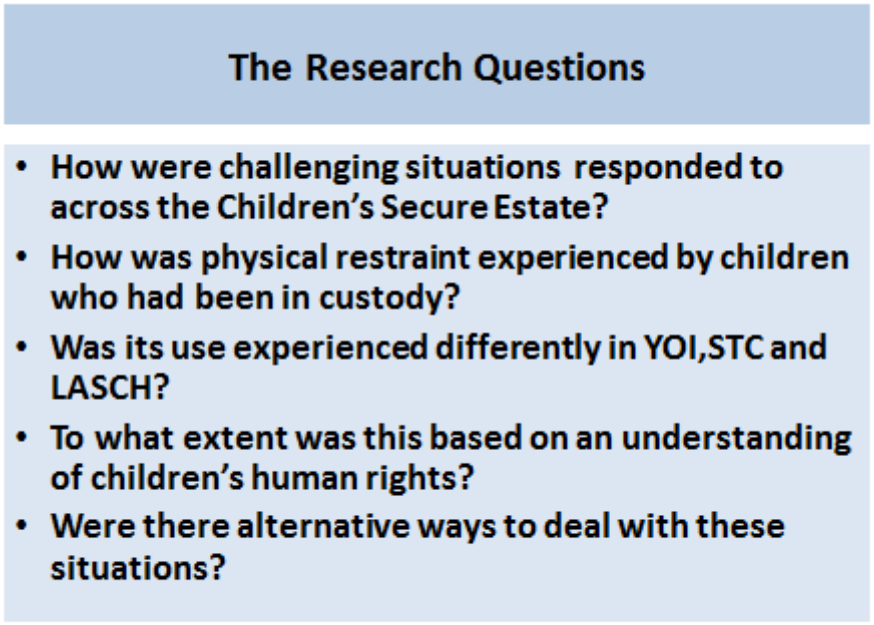


Diagram 1 – The Research Questions

Initial approaches were made to a number of services and organisations that work with children within the criminal justice system in the north east of England (a STC, a Youth Offending Service, a LASCH, a YOI, Investing in Children and The Howard League) all of which indicated their willingness to become involved in the research in order to explore innovative participative rights - based practice with children who offend (Smith, 2010).

1.7 A timely and relevant issue for research

Between July 1990 and January 2014, 33 children died in custody in England and Wales (INQUEST).These children were technically in the 'care of the state' and represent some of the most problematic and challenging children in society. The deaths of these children should (arguably) have caused a public outcry, as you would expect of the untimely death of any child under the age of 18. In fact they go at the very least un-noticed, in terms of public or media attention and are frequently unchallenged (Goldson & Coles, 2005). There has, for example, been no public inquiry into any of these deaths.

Some of the deaths occurred during the use of physical restraint, for example, Gareth Myatt, aged 15, 2004, whilst others took their own lives having been physically restrained, for example, Adam Rickwood, aged 14, 2004.

In order to illuminate the reader and to be absolutely clear about what is at stake here further details will be described about these two specific cases. In providing further details I have drawn on the descriptions provided by Goldson & Coles (2005) and by The Howard League.

Adam Rickwood died on 9th August 2009, aged 14. He was the youngest person to die in custody. Adam lived in Burnley, Lancashire but had been remanded to a privately run SCH in County Durham some 150 miles away from his family. It was his first time away from home. Adam hanged himself in his room hours after being subjected to the painful and controversial 'nose distraction' restraint technique. The technique, which was subsequently outlawed, was one of a number of pain compliance techniques that were used by STC's as part of PCC (Physical Control in Care) and was routinely used for non-compliance (failure to obey orders). Adam had been restrained by four male members of staff. Despite the known psychological impact that a restraint can have on a child, no

additional monitoring, observation or interaction with Adam took place following the event and he was found hanging in his room at midnight.

Gareth Myatt died on 19th April 2004, aged 15. Gareth lived in Stoke on Trent and at the time of his death was placed in a STC in Northamptonshire. It was Gareth's first time in custody. Gareth was a young man of dual heritage, just over five feet tall and weighing just six and a half stone. Just three days into his sentence Gareth was restrained using the 'seated double embrace' restraint technique by two male and one female member of staff. During the restraint Gareth complained that he couldn't breathe, vomited and lost consciousness. The Duty Nurse failed to resuscitate him, and he was taken to hospital by ambulance but was later pronounced dead. He had refused to clean a sandwich toaster that other children had also been using and had been sent to his room. When officers tried to remove Gareth's possessions from his room there was an altercation because he refused to hand over a piece of paper with his mothers' mobile phone number on it. Gareth was restrained as a result. He had previously been restrained when he refused to be strip searched on his admission to the STC. The 'double seated embrace' technique, also part of the PCC, has since been withdrawn from use.

Their deaths have contributed to a discourse about how to address the needs of children in custody and how best to care for this population (Gyateng et al., 2013). However, the evidence about the needs of this group of children rarely reflects children's own perspectives, is not underpinned by a rights- based framework and reflects the on-going oscillation between welfare and punishment referred to above.

Whilst there has been no public enquiry the Government has responded to concerns about restraint-related deaths in custody and to the allegations of the routine and unlawful use of restraint in parts of the secure estate. In February 2012 an Independent

Restraint Advisory Board (RAB, now the Independent Restraint Advisory Panel IRAP) was appointed, by the Government, to carry out the following tasks:

- To assess the quality and safety of systems of restraint commissioned for use on children in secure children's homes AND
- To support the implementation of (MMPR) Minimising and Managing Physical Restraint - the new system of restraint for use in secure training centres and under-18 young offender institutions.

In July 2012 new guidance was issued in relation to MMPR which is being rolled out across all YOI's and STC's which became operational by December 2014. This guidance includes the use of pain compliant techniques and is, therefore, a controversial issue for those concerned with both safeguarding issues and for those committed to the human rights of children.

The time is therefore right to contribute to the debate and to ensure that children's perspectives are taken into account as decisions are made about how and in what manner children in custody are best cared for.

1.8 Contextual setting for the research

As suggested above, the human- rights of children are a contested area. The UNCRC itself lacks clarity about the extent to which children's rights are enforceable and, as the UNCRC has not been incorporated into domestic legislation within the UK, there is a view that the UNCRC does not infer the same full adult rights to a child (Hollingsworth, 2008; Lansdown, 2001; Lyons, 2007).

There is also a lobby to introduce a Bill of Rights and a coalition of children's organisations throughout the UK is currently campaigning for the UNCRC to be incorporated into domestic law (ROCK, 2012).

> A childhood without rights causes immense harm in the here- and- now; it also diminishes future adult lives. If human beings are treated as having equal worth and dignity, and to be able to develop their full human potential, children cannot be an after-thought. Human rights start with children and childhood, because this is where human life begins.
>
> Willow, (undated) p1

It is asserted that the UNCRC is written from an adult perspective (Freeman, 1998) and that there is:

> ….a discord between children's own experiences of being a child and the institutional form which childhood takes.
>
> Freeman, 1998, p439

This lack of a child's perspective within the convention, together with the manner in which it has been implemented within the UK has, it could be suggested, taken the children's rights agenda up something of a 'cul – de - sac'. Hence the confusion and conceptual muddle, described above by Jupp Kina (2012).

There has been a recent move to making explicit the distinction between children's rights and children's human rights. Further distinctions are also set out in Chapter 2 which explores other definitions and ways of understanding the rights accorded to, and withheld from children. This may appear pedantic, however it draws attention to the differences, and to the fact that in some areas of the law (although not always in practice) no distinction is made. The Human Rights Act 1998 and Data Protection Act 1998, for example, make no distinction between adults and children and confer the same status of 'subjects' equally.

> …..we need to begin from the recognition that 'children's rights' is not just a political and legal construct (which the UN Convention of the Rights of the Child of course is) with social and societal consequences for children and childhood which sociologists may then explore. Children's rights are not just rights, they are *human rights* – they are rights that children are entitled to as human beings, equal to other (adult) human beings.
>
> Freeman, 2010, p7

The extent to which children as rights -holders also conveys citizenship, is equally contentious (Larkins, 2013). Within the youth justice arena there is a view (Freeman, 1995; Smith, 2010) that the UNCRC has had little impact on promoting children's rights and a number of national children's charities and legal rights organisations (Barnardos, NCB, The Howard League, CRAE, UNICEF, The Prison Reform Trust, INQUEST), have been campaigning to raise awareness about the lack of compliance within the UK to the requirements of the UNCRC specifically within the youth justice arena. The Commissioner for Human Rights of the Council of Europe expressed concerns specifically about issues associated with children in custody (2008) and The UN Committee on the Rights of the Child has similarly reported its concerns on a number of occasions, for example:

> In the UK the number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort.
>
> UNCRC, 2008, p9

So whilst Kilkelly (2008) suggests that 'international standards' are binding and that children's rights, even for children in conflict with the law, are protected this is not

necessarily the case. More recently Kilkelly puts forward some useful suggestions about ways to improve compliance through children's rights auditing and strategic litigation (Killkelly, 2011, p185).

There is also emerging evidence that the incorporation of the ECHR into UK law by the Human Rights Act 1998 and the increasing regard paid to the UNCRC in jurisprudence, legislation and policy (Hollingsworth, 2014, p2) have facilitated their use in protecting the rights of children and can be used to highlight and address some of the harms and disadvantages felt by children brought into the criminal justice system.

Hollingsworth (2014) argues the case for a rights- based youth justice system that supports what she describes as the foundational rights of children.

> Recognising the existence and importance of children's 'foundational rights' allows for greater conceptual clarity in understanding the requirements of a rights-consistent youth justice system: it must not only be consistent with the child's current autonomy but also her future capacity for autonomy, as protected by her foundational rights.
>
> Hollingsworth, 2014, p6

Hollingsworth suggests that in upholding the interests of children no action should serve to permanently or irreparably harm a child's foundational rights. She lays responsibility for this firmly in the hands of adults, either parents or on the state where it assumes a role as parents when, for example, a child is in the care of the state i.e. in custody. She suggests that childhood is a time for 'gathering and developing assets, which should be protected by a category of rights that are deemed foundational' p6. As such parent or those with a parenting responsibility also have a duty to protect the

foundational rights of all children and should take no action that might interfere with or harm those rights.

Discourse around children's involvement in criminal and anti- social behaviour dates back centuries and there has been what Muncie (1999) describes as an 'institutional intolerance' to the behaviour of some groups of children throughout history (Cohen, 1972; Pearson, 1983). The reality is that there is no more youth-related crime committed now than in the past and, if anything, there is evidence that the frequency and severity of youth crime has been decreasing since the early 1990's (Bateman, 2014) and the numbers of children in custody have fallen significantly since the mid 2000's.

Youth offending statistics are notoriously difficult to analyse and the influence of the media and political ideologies have been at the heart of changing landscapes and responses to the challenges posed by children who are in trouble. Crime statistics are themselves constructions of a reality and can be presented in different ways to support different arguments and ideologies. There were, for example, twice as many children in custody in 2011 as there were in 1989 (Ministry of Justice, 2011) although the numbers have now fallen dramatically. It has been argued that in the UK more children have been locked up than anywhere else in Europe (Criminal Justice Alliance, 2012) and during the 1990's and 2000's there was a worrying trend towards the globalization of crime control (Muncie, 2005) combined with the responsibilisation (Muncie, 2006) and adulteration (Fionda, 1998) of children. There continues to be an undercurrent of pathologising 'delinquent' behaviour and children's needs that arise out of structural issues such as poverty (Sharpe, 2009). This process holds children personally and individually responsible rather than seeing youth crime as a symptom of something more deeply rooted in the way that society is structured (poverty, unemployment,

inequality, racism etc.), the political economy, the result of irresponsible media, or as a result of an inability to implement fully the human rights to which children are entitled. Given the challenges of collecting and interpreting youth crime statistics my focus is on the qualitative data, particularly that evidence that is collected directly from children.

Scraton and Haydon (2002) suggest that children's offending or offensive behaviour could be a way of coping with their experiences of social injustice (p325) rather than being pathological symptoms of a deficient personality or dysfunctional family.

Children's welfare needs that arise from social-structural disadvantage, particularly the needs of women and girls, are being criminalised (Sharpe, 2009; Sharpe & Gelsthorpe, 2009; Smith, 2014). The focus on risk factors and the idea that some children could be singled out as being 'at risk of offending' created an industry of initiatives that purported to be able to select and then prevent children from slipping into criminality (ON TRACK, YISP etc.). Risk factors included personal or individual traits, for example low self -esteem, or family pathology, poor parenting, single parenting etc. There has been very little discussion about the notion of a rights based youth justice system. The relationship between rights and children who are involved with the criminal justice system is a complex one which will be explored further in Chapter 2.

1.9 Children in custody

The role and function of prisons is complex and a thorough analysis beyond the scope of this study. However it is important to assert some of the key elements of a penal institution as this does have a bearing on my arguments. Prisons are not solely institutions within which an individual's liberty has been restricted. In addition to the limits to a person's freedom the prison is intended to both punish and reform an individual.

Jenks (1996) pursues this argument with his construction of the Apollonian child and the Dionysian child.

> The offending, or evil, child has to be beaten into submission…..To be socialised is to become one with the normative structure and so the idea of evil that is projected out into the image of the Dionysian child is, in fact, providing the vehicle for expunging all sentiments that threaten the sacred cohesion of the adult world.
>
> Jenks, 1996, p70

As suggested above there is a significant body of evidence that suggests that the population of children who are incarcerated in the secure estate are some of the most damaged, troubled, and vulnerable children in society (Goldson & Coles, 2005; Jacobsen et al., 2010; The Howard League, 2012) and further evidence that in both meeting the needs of children and in preventing further offending, locking them up simply doesn't work (Lyon et al., 2000). Stone (2012) reflects on the logic of children sentenced to custody for breaking the law and then experiencing unlawful restraint which often intensifies aggressive behaviour.

Many of the children who are placed in custody on remand do not go on to receive a custodial sentence (The Howard League, 2014), which begs the question as to whether or not the use of custody was necessary or justifiable. Current statistics for the numbers of children in the secure estate are discussed further below. Children have also received custodial sentences for non-compliance i.e. for breach of their original order. Finally there are also children placed in LASCH who have not committed a crime or even been charged with a crime but who are placed in custody on welfare grounds (Section 25 Children Act 1989), and for their own safety and protection.

If one strips away the numbers of children placed on remand, the number who are in custody on welfare grounds, and those that are there for non-compliance it doesn't leave many who are, allegedly the most violent and prolific offenders in the country. Evidence of the specific vulnerability of these children is discussed below.

Vaswani (2014), for example, reports that 91% of boys sentenced in a YOI had experienced bereavement and that figures for traumatic and multiple deaths were high. There is also evidence of significant mental health issues, learning difficulties, experiences within the public care system, and experiences of violence and domestic abuse all of which lead to trauma (Jacobsen et al., 2010).

Evidence reported above that calls into question the use of custody for children suggests that it neither reduces the re-offending rates nor addresses the difficulties faced by these children. Furthermore it suggests that custody itself may be damaging and, that children's experiences and treatment whilst they are locked up may be harmful and detrimental.

> The use of restraint on young people who self-harm which reinforces their sense of worthlessness and self-destructive intent can be profoundly harmful.
>
> O'Neill, 2001, p213

As well as failing to prevent re-offending there is evidence that incarceration itself is damaging (Goldson, 2002) that children report bullying and other forms of violence (CRAE, 2012) as well as victimisation and feeling unsafe (Murray, 2012).

> The current youth justice system is failing. With re-offending rates as high as 72% for children released from custody (Ministry of Justice, 2011), it is clear that

> a system focused on criminalisation and punishment fails children, victims and communities at extraordinary cost to society and the public purse.
>
> The Howard League, 2012, p1

There are directs link between children who have been in custody and poor outcomes in terms of health care, employment, mental health issues, homelessness etc.

> Whether politically, pragmatically or economically inspired, a case establishing the damaging effects of custody on children (and the whole community) has repeatedly been made and acknowledged.
>
> Goldson & Muncie, 2006, p95

The current decrease in the numbers of children in custody appears to have been unexpected but significant enough for the Youth Justice Board to reduce the number of secure beds in LASCH commissioned for children (a reduction of more than 700 between August 2008 and April 2011) which is the most expensive provision within the secure estate. Further reductions are underway at the time of writing (October 2014). As of July 2014 there were 1,122 children in custody (YJB, 2014). Whilst there are those who would challenge any form of incarceration for children under the age of 18 this is currently unthinkable. If children are going to be locked up anywhere, therefore, LASCH are considered by practitioners and human rights activists to be a 'better' or least harmful alternative. Children themselves have reported that they prefer to be placed in LASCH than, for example, in YOI where the regime is often much harsher. The closure of significant numbers of secure beds is, therefore, a worrying trend and appears to be resource led not needs led.

Incarcerating children is difficult to justify on almost any grounds. It is clearly ineffective (if the aim is to prevent or deter children from offending behaviour) given the high rate of re-offending. It has been demonstrated to exacerbate existing difficulties for children (mental health, education and attainment, family relationships, employment opportunities, housing). It violates children's human rights and is not metered out equally i.e. it is possible to demonstrate that there are a higher than average number of black and ethnic minority children in custody, as well as an over representation of children from economically disadvantaged backgrounds (Jacobsen et al., 2010). This suggests that the criteria for the use of custody are not used consistently and are influenced easily by individual characteristics and structural inequalities. Finally use of custody can be demonstrated to be influenced by external forces such as the media, politics and by individual events. It is also very expensive and in times of austerity this, if nothing else, should spark some interest in discontinuing its use. However there is simply no political or public interest or appetite for this discussion.

Goldson (2005) discusses the extent to which using locked institutions represents care for these children in society. He describes this in terms of the dichotomy between victim and threat but in the final analysis concludes that:

> Prison service institutions are not caring organizations despite the best efforts of many staff.
>
> Goldson, 2005, p105

Concerns have been documented about the training, experience and competence of some of the staff whose job it is to 'care' for the children in the secure estate. There are significant differences in the requirements of the three different types of institution (LASCH, STC, YOI) which are well documented (Phoenix, 2011; Smallridge &

Williamson, 2008) and include different staffing levels, staff training and qualifications, the regime and culture within institutions, safeguarding policies and procedures, ratio of staff to children, hours in education and others.

In terms of legal status the position of children in custody is complicated and their legal rights and entitlements unclear. Hollingsworth (2012), for example, has identified five categories of children in custody each of which generate different obligations on the state in terms of care and after care.

These are:

> Care leavers; 'looked after' children; 'former looked after' children; children in need; and 'no status' children.
>
> Hollingsworth, 2012, p12

The lack of clarity about the legal status of and state responsibilities towards these children creates the circumstances in which, it can be argued, their rights are more easily ignored and attitudes towards them can be punitive and oppressive and do not represent the care and respect to which they are entitled. The lack of public or political concern for the welfare these children or any explicit will to end the use of custody for children is indicative of the lack of interest in practice based on a rights framework for children.

1.10 The use of physical restraint in custody

Physical restraint and, or 'holding' is used in a variety of settings including paediatric medicine, psychiatric settings, children's residential care and within residential facilities for learning disabled children. Physical and chemical restraints are also used in some paediatric, mental health and learning disability establishments. There has been an on-

going debate in the UK about the type of regime used within these various settings and, for the purpose of this research the focus will be on the secure estate specifically around the use of physical restraint. It has to be acknowledged that because of the issues faced by the children within these settings, as well as the environment in which they are contained, challenging behaviour is not uncommon and there has been a need to develop a response to situations in which children either pose a risk to themselves or to others. How such challenging behaviour is understood is significant and whilst it is treated as a discipline issue with almost no examination of its root causes, the response is likely to be very different. It is this response to challenging behaviour that is explored in this study.

Children's Homes Regulations (1991) refer specifically to issues around control and discipline within children's homes including LASCH and the Department of Health issued guidance on 'Permissible Forms of Control in Children's Residential Care' in 1993. There followed a raft of different guidance documents and regulations which are set out below. Within these there is an acceptance that physical restraint is sometimes necessary where a child's behaviour poses a risk of harm, defined by (Smallridge & Williamson, 2008) as 'risk of physical or psychological harm to a person' (including staff) and also that pain compliance may be necessary in exceptional circumstances. However there are also recommendations that the use of force must be necessary, proportionate and in accordance with the law (RAB, 2011).

Following a number of children's deaths in custody a review of the use of physical restraint was carried out by the National Children's Bureau in 2004, The Carlile Inquiry (2006) was commissioned by The Howard League, and in 2010 an Independent Advisory Panel on Child Deaths (IAP, 2010) reported its findings. These provide

evidence of unnecessary or even unlawful use of physical force and report its use in situations where children fail to comply with instructions, which contravened the regulations that were in place about when use of physical restraint is permissible. The deaths of Adam Rickwood and Gareth Myatt took place during the period in question. The use of restraint in each case appears to have been as a result of their failure to comply with instructions. Questions continued to be asked about whether the use of physical restraint is lawful or not and led to a legal challenge (CRAE, 2011) about the unlawful and abusive use of restraint in custody, see (Mr Justice Foskett, 11.1.12).

> We were concerned that in some cases there appeared to be a culture where dissent was not tolerated and that physical restraint was used to secure conformity.
>
> The Carlile Inquiry, 2006, p29

Research has been carried out looking at children's experiences of the use of physical restraint (Steckley & Kendrick, 2007) and a review of restraint across the juvenile secure estate was commissioned (Smallridge & Williamson, 2008). There has, however, been little research from the perspective of children, about how the use of physical restraint might be reduced. There is also very little discussion in any of the reviews or recent research addressing the issue of rights specifically in relation to the use of physical restraint and whether, in fact, this contravenes Human Rights legislation. My research explored, from children's perspective, a rights-based approach to challenging situations involving children in custody and whether, in fact this might reduce the need for physical restraint and/or children's experiences of restraint, as a result.

The use of physical restraint appears to be 'a given' i.e. that it is a necessary means of managing behaviour. There is an assumption, based on the conceptualisation of

childhood which is explored in the next chapter, that the children whose liberty has been restricted are *either* at risk *or* pose a risk (as described above)- the victim or threat dichotomy that lurks beneath the discourse around locking up children. The thorny issue of cost is also significant. It is very expensive to keep children locked up (see Pitts & Stevens, 2011) and the way that resources are managed in terms of staffing levels, resources, access to services etc. is often about cost, with a knock on effect on the quality of care that is provided. What is absent from either of these considerations is the assertion that children are already citizens with human rights underpinned by national and international legislation. In the absence of this perspective it is not surprising, therefore, that there has historically been little debate about the way that challenging situations are managed with children in custody in a way that avoids the use of physical restraint and promotes a rights-approach. This issue will be explored at length in later chapters.

Reviews that have been conducted use language that barely acknowledges the existence of rights (Bleetman et al., 2005; Smallridge & Williamson, 2008) describing children as 'trainees' and discussing 'challenging behaviour', 'violence', 'assaults' and 'behaviour management'. There is only a passing reference to human rights and the RAB discusses issues around safer restraint and the health and safety of the child being restrained rather than looking at rights-based alternatives. A report from the RAB (2011) makes a point of stating that the preferred provider (National Offender Management Service and its specialist unit, National Tactical Response Group) within the juvenile secure estate was explicitly not commissioned to consider developing the option of a restraint system that involved no pain-inducing techniques. The introduction in 2012 of the new guidance on the use of physical restraint (MMPR) and the YJB training that followed specifically makes no mention of children's human rights. It is difficult to see how any of

this fits into a rights-based approach to caring for children that is mindful of the UNCRC or acknowledges the Human Rights Act 1989, and once again there is no suggestion of investigating a no restraint alternative (although this is possible in other places). If, in fact, children are viewed primarily as citizens with rights this may alter the way that the issue is approached and, therefore, the way that children experience the criminal justice system.

My research attempted to contribute to the evidence about children's experiences of physical restraint by developing a discourse, involving children themselves, about alternatives to the use of physical restraint in custody.

1.11 The legal and policy framework

It is important to place this research within the current legal and policy framework in order that the reader can see for themselves how decisions are made within the system, and also to get a flavour of the complexities and vagaries of the decision making that is operational at this point in time.

The generic term 'secure accommodation' refers to locked institutions across both children and adult services and is used within education, health care (mental health and learning disability), as well as child-care and prison services. The specific term 'the secure estate' refers to LASCH (local authority secure children's homes), STC (secure training centres) and YOI (young offender institutions) for children up to the age of 18 and was brought together in 2000 when the YJB was given responsibility for commissioning and purchasing custodial places for under 18's. In England and Wales (it is different in Scotland and in Northern Ireland) children can be locked up as a result of either welfare or criminal proceedings i.e. through the Family Court or the Youth Court. However these are all children, in the eyes of the law.

> Throughout these volumes….it is emphasised that young people accommodated in secure settings who have not reached their 18th birthday are legally 'children' and remain entitled to the same level of care, protection and safeguarding as any other child. This understanding must be at the heart of all work undertaken with the young people.
>
> Ministry of Justice, 2012, p 4

The history of custody for children is a complicated one which immediately demonstrates confused thinking and conflicting ideologies. It includes: the development of borstals; detention centres; the 'short, sharp, shock'; special units for 'exceptionally disturbed' boys; and the first centre for girls (which opened in 1962); approved schools etc. The introduction of closed facilities was born out of the approved schools system and was the result of high levels of absconding combined with rising juvenile crime rates.

Alongside these runs a commentary about the failures of the system including: high levels of re-conviction; inability of staff to deal with very challenging behaviour; a concern that the actual environment might contribute to difficulties including inadequate staff training; a lack of clarity about the needs of girls and young women; and persistent over-representation of black and ethnic minority children.

The governance arrangements for detention centres, youth treatment centres, community homes with education (CHE) and observation and assessment centres moved between The Home Office and the Department for Health and Social Security. Whilst the number of available places rose significantly there has been little evidence of any robust evaluation of their effectiveness or of their impact on children, particularly from the perspective of children themselves.

The continuing confusion between care and control, combined with a lack of clarity about purpose has plagued the institutions of the secure estate.

> The conflicting philosophies of care and control in an overtly custodial setting result in inconsistency in practice between staff in the units and differences in emphasis between the units.
>
> O'Niell, 2001, p81

1.12 The current legal framework

The key pieces of legislation and guidance governing the use of restraint in the under-18 secure estate are:

- The Young Offender Institution Rules 2000 (rule 50) made under The Prison Act 1952;
- The Secure Training Centre Rules 1998 (rules 37 and 38) made under The Prison Act 1952;
- The Children's Homes Regulations 2001 (amended 2011) made under the Care Standards Act 2000

Young Offender Institutions

The Young Offender Institutions Rules 2000:

"Rule 50: Use of Force

1) An officer dealing with a prisoner shall not use force unnecessarily and, when the application of force is necessary, no more force than is necessary shall be used
2) No officer shall act deliberately in a manner calculated to provoke a prisoner

Secure Training Centres

The Secure Training Centre Rules, 1998, Rules 37 and 38:

"Rule 37: Use of Force"

1) An officer in dealing with a trainee shall not use force unnecessarily and, when the use of force is necessary, no more force than necessary shall be used
2) No officer shall act deliberately in a manner calculated to provoke a trainee

"Rule 38: Physical Restraint"

1) No trainee shall be physically restrained save where necessary for the purpose of preventing him from –
    a. Escaping from custody;
    b. Injuring himself or others;
    c. Damaging property; or
    d. Inciting another trainee to do anything specified in paragraph (b) or (c) above, and then only where no alternative method of preventing the event specified in paragraphs (a) to (d) above is available.
2) No trainee shall be physical restrained under this rule except in accordance with the methods approved by the Secretary of State and by an officer who has undergone a course of training which is so approved
3) Particulars of every occasion on which a trainee is physically restrained under this rule shall be recorded within 12 hours of its occurrence and notified to the monitor

Secure Children's Homes

Children's Homes Regulations 2001 (as amended):

17 A Restraint

1) Subject to paragraph (2) a measure of restraint may only be used on a child accommodated in a children's home for the purpose of –
    a. Preventing injury to any person (including the child who is being restrained);
    b. Preventing serious damage to the property of any person (including the child who is being restrained);

    And,

    c. In the case of a child accommodated in a children's home which is a secure children's home, preventing the child from absconding from the home and then only where no alternative method of preventing the event specified in sub-paragraphs a) to c) is available.
2) When a measure of restraint is used on a child accommodated in a children's home –
    a. The measure of restraint must be proportionate, and
    b. No more force than is necessary should be used.

Using more force than is required is unlawful, staff must prove that the intervention is proportionate to the aim (i.e. you should not use a sledge hammer to crack a nut).

Ministry of Justice, 2012 a & b

1.13 International Human Rights Frameworks

Both the United Nations Convention on the Rights of the Child, 1989, and the Human Rights Act, 1998 are relevant to the use of physical restraint and the treatment of children in custody.

> The UNCRC states emphatically that all rights in the Convention are inviolate and inalienable and apply to all children whatever their circumstances.
>
> National Preventive Mechanism, 2013, p2

Article 37 of The UNCRC sets out the following expectation for state parties:

> a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment…
>
> b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The (restriction of liberty)….shall be used only as a measure of last resort and for the shortest appropriate period of time.
>
> c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

Article 40:

States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

United Nations General Assembly, 1989

Other relevant UNCRC articles refer to specific rights for each and every child such as: the child's best interests (Article 3); limits on the circumstances in which children are

separated from their parents (Article 9); the right to have their views taken into account (Article 12); protection from all forms of violence, abuse or neglect, (Article 19); right to health and health services (Article 24); and promoting physical and psychological recovery and social integration of a child (Article 39).

Some of the provisions under The Human Rights Act, 1998 are also relevant, including:

- Article 3, which provides for the right to freedom from inhumane and degrading treatment;
- Article 5, which provides for the right to liberty and security of person;
- Article 6, which provides for the right to a fair trial and which includes civil cases and regulatory procedures;
- Article 8, which provides for the right to respect for private and family life;
- Article 14, which prohibits discrimination in the enjoyment of European Convention rights.

Goldson, 2002, p19

A number of other International Standards and Rules also apply. The UN Committee on the Rights of the Child has recommended that the UK should fully implement these standards.

1) The Beijing Rules (1985) which provide for the protection of children's rights and respect for their needs in the development of separate and specialised systems for juvenile justice.
2) The Riyadh Guidelines (1990) which provided guidance on the prevention of juvenile delinquency.

3) The Havana Rules (1990) which set minimum standards for the protection of juveniles deprived of their liberty.
4) The JDL Rules, The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. II (12)

1.14 Enquiries, legal challenges and significant events

Significant pressure has been growing over the past decade (2004-2014) that has challenged the morality, legality and ethics involved in the use of physical restraint. In chronological order these were:

2004 – Deaths in custody of 14 year old Adam Rickwood and 15 year old Gareth Myatt

2004 – Report on the Use of Physical Intervention across Children's Services (Hart & Howell, National Children's Bureau)

2005 – Independent Review of PCC and Behaviour Management in STC (Bleetman & Boatman)

2006 - The Lord Carlile of Berriew QC Report (Commissioned by The Howard League)

2006 - YJB issued the Code for Managing the Behaviour of Children and Young People in the Secure Estate.

2008 – Independent Review of Restraint in Juvenile Settings (Smallridge & Williamson)

2008 – Joint Committee on Human Rights called for the retraction of certain techniques

2008 – Court of Appeal orders amendments to STC making the use of physical restraint for promoting 'good order and discipline' unlawful.

2008 – Independent Advisory Panel on Deaths in Custody established

2010- 1st meeting of the Restraint Advisory Board, RAB (The Independent Restraint Advisory Panel, IRAP, from 2012)

2010 – Independent Advisory Panel on Deaths in Custody Report

2011 - Children's Commissioners Report 'Young People's Views on Restraint'

2011 – RAB Report

2011 – 'Twisted Up' Report, The Howard League

2011 – Follow up to the Lord Carlile Inquiry (5years on)

2011 – Review of the Medical Theories and Research Relating to Restraint Related Deaths (UCLAN)

2012 – Introduction of MMPR

2012 – Lord Justice Foskett ruling (CRAE v Secretary of State for Justice and G4S Care and SERCO)

2012 – 'Ending Violence against Children in Custody' CRAE

2013 – 'Young People and the Secure Estate: Needs and Interventions' commissioned by the YJB

2014 – 'Deaths of Children in Custody. Action Taken, Lessons Learnt'. YJB

2014 – Review of LASCH, commissioned by the Secure Accommodation Network (SAN)

1.15 Summary

This chapter has established the context in which this research was conducted. There is little agreement academically, politically or publically about how children who break

the law should be treated and, furthermore about the issue of children's rights. However there is space within this to develop a different argument which places children not as *either* a child *or* as an offender but places them as a citizen with additional rights. The consequences of this shift creates a space in which children as children, as offenders, as researchers and as citizens can add an invaluable, contemporaneous perspective that could help to create alternatives.

Chapter 2 is the literature review and sets the research within a broader academic context. It is divided into two parts. Part I interrogates conceptualisations of children and childhood as well as exploring rights and establishing a children's human rights framework. Part II focuses on issues around youth justice, the use of custody for children and the use of physical restraint.

Chapter 2

The research context – A literature review

Part I

2. Introduction

The aim of this chapter is to provide an overview of the literature in fields that are relevant to this study and to clarify the academic and theoretical foundations upon which the study is based. This includes assumptions and conclusions reached during the study period and those that have influenced thinking and practice in the relevant fields.

Part I of this chapter will explore how the social construction of childhood is influenced by numerous external events, processes and politics.

The case that is put forward in this study is as follows: The concepts of the child, children and childhood are social constructs which vary in time, place, history and culture. The socio-political construction of childhood is, therefore, significant. The argument being that the way children in general, and the 'criminal' child specifically are perceived and conceptualised influences the way that they are treated at both a systems level i.e. by the criminal justice system and individually i.e. by the institutions that are designed to 'care' for them. Whilst children involved in the criminal justice system fail to be regarded as rights bearing citizens, it will be argued, it is unsurprising that their rights can be disregarded. This situation is particularly significant for children who have been deprived of their liberty and who then experience the use of physical restraint

whilst incarcerated. The position of children placed in LASCH on welfare grounds i.e. under Section 25 of the Children Act, 1989 is particularly significant.

Part II explores how the child who breaks the law i.e. the criminal child, is constructed. It will set out the key issues in describing responses to juvenile offending in the UK including issues about how children in custody are treated. Evidence about the use of physical restraint with children who are deprived of their liberty will be examined. Finally the arguments for adopting a rights-based framework will be presented.

All of this will be explored through the lens of children's human rights and with an explicit commitment to the inclusion of children's voice throughout (see **Diagram 2**)

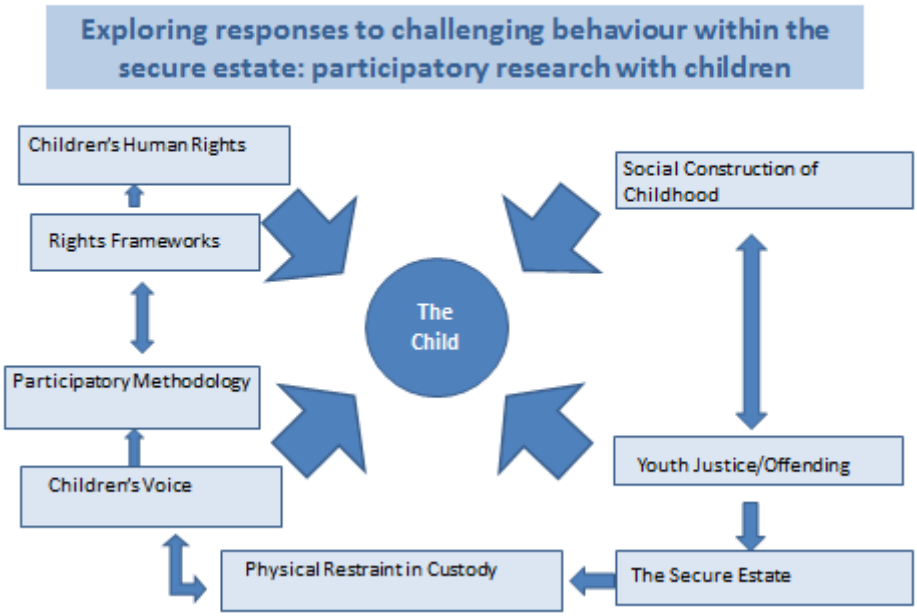


Diagram 2 – Exploring the voice of the child

> A cultural politics of childhood will help us to see changes in conceptions of childhood as the product of the relations that adults have with children, relationships that are themselves located within the broader social, political and economic frameworks that structure societies and which give shape to the institutional arrangements – work, schools, families, churches – through which children's daily lives unfold.
>
> James & James, 2004, p 27

The way that children are perceived, portrayed, written about etc., it can be argued, fall into two opposing views. Children as: *either* innocent (tabula rasa –Locke, 1689) incompetent, vulnerable and in need of protection; *or* children as dangerous, out of control (hooligans –Pearson, 1993) lacking in discipline and in need of guidance. In both cases children are seen as in need of adult support in order that they develop into fully competent, responsible law abiding adults and as such they are not yet fully a person. Neither of these positions place children as citizens, with agency, and in possession of rights or possessing a view of the world that is valuable in and of itself. The contradictions of child as 'dangerous' threats to law and order or as 'vulnerable' and in need of protection and constraint, it can be argued, renders them immobile.

> Thus, children fall short of the idealised autonomous citizen, consumer or recipient of services.
>
> Cockburn, 2007, p 446

Thomas & Percy- Smith (2009) discuss the notion of active citizenship in the pursuit of children striving to create a better future, and they describe children's participation that

is rooted in their everyday lives. I also explore some aspects of citizenship within this study.

An understanding of the way that childhood is constructed, the significance of children's human rights, and what it is to be a rights bearing citizen are also relevant and significant to my arguments. As children's human rights are regularly flouted and the rights of child offenders even more so, the role and relevance of rights is significant and, it will be argued, can influence the social construction of both the child and the offending child. The relationship between rights and children who are involved with the criminal justice system is a complex one.

Similarly the place of children's voice is relevant. There has been a growing body of evidence which suggests that involving children in shaping services or in developing responses to difficulties in their lives not only demonstrates a commitment to their human rights but also can lead to improved outcomes. This evidence will be investigated in more detail.

2.1 Childhood as a social construct

The study of children and childhood started relatively recently with the development of the sociology of childhood and proliferation of childhood studies. Numerous ways of theorising about and defining 'the child' are emerging. The child as: 'savage', the 'natural child' and the 'social child' (Jenks, 1996 & 2005); the Dionysian child, and the Apollonian child (Jenks, 1996 & 2005); the natural child, the romantic child, the evangelical child (James & Prout, 1997); the socially constructed child, the tribal child, the minority group child and the social structural child (James, Jenks & Prout, 1998); the queer child (Stockton Bond, 2009); devils and angels (Fionda, 2005); the disputed child (Smith, 2010); the child in need versus the responsibilised, adultised young offender

(Gray, 2011) and recently as consumers and as units of investment (Aked et al., 2009) and so on. They are described as: 'beings and becomings' (Uprichard, 2008); as non-persons or not having full social personhood (James & James, 2004); pre-social, a child not yet part of her society (Alanen, 1988); or as citizens in waiting.

> There appear to be two lives, one serious and respectable, the other indulgently tolerated, less valuable. We say: a future person, a future worker, a future citizen. That children will be, that they will really begin to be serious only in the future.
>
> Korczak, 2009, p33

This is then a complex, highly contested and ever changing landscape. The complexity and fluid nature of the social constructs does, however, create opportunities for refinement and for influence.

The way that childhood is constructed and the assumptions and expectations associated with such construction impact on the way that individuals or groups of people, in this case children, are treated. My argument is that if the conceptualisation of childhood is a social construct then it is possible to impact on the way that they are socially constructed (by human-meaning making) and to challenge the current discourse on childhood, in particular the discourse around children who offend.

> Our ideas about children are paradoxical. At one and the same time we see them as 'innocent' and want to protect them from adult exploitation and coercion, while also seeing them as menacing and dangerous, it being ourselves who need protection from them.
>
> Stainton- Rogers, 2010, in Foley et al.

The information that we (adults) use to inform our views about childhood is, itself, varied and complex. It involves the media (the reporting of the murder of James Bulger as discussed in Fionda, 2005); literature (Lord of the Flies, William Golding; Peter Pan, J.M. Barrie; Emile, Rousseau; Swallows and Amazons, Arthur Ransome discussed in Stainton Rogers, 2001); poetry (Blake, Coleridge and Wordsworth discussed in James & Prout, 1997); and triggered by individual events or children (the murder of James Bulger in 1993; the disappearance of Madeleine McCann, 2007; or the shooting of Malala Yousafzai in 2012).

This suggests that the social construction of childhood and of the child is constantly open to changing and shifting circumstances and to external influences.

> Just as I have argued that the child is neither simply 'natural nor merely 'normal', we may claim to have established in addition, that the child is not neutral but always moral and political.
>
> Jenks, 1996 & 2005, p61
>
> Attitudes to children, as reflected in public and political debate and in the media, are punitive and ill-informed; children are frequently scapegoated for problems created by adults…..and children's welfare is seldom considered when there are issues under review. Concepts of children and of them being objects of concern rather than people persist within the family, within institutional settings, and in wider society in sharp contrast to the principle of children's rights which was accepted by the Government when it ratified the UN Convention in 1991.
>
> All Parliamentary Group for Children, 1993

Attempts have been made to draw on other disciplines such as history (Ariès). The influence of developmental psychology (Piaget & Vygotsky) on early interpretations and definitions of childhood are obvious.

What seems clear from such attempts is the extent to which these disciplines are dominated by an adult agenda. Where children are discussed it is within the wider context of the family, generational issues, childcare, education, socialisation etc. Mayall (2002) usefully acknowledges the work of feminists in the 1980's who acknowledged and promoted the significance of the issue of children as rights holders.

> It is within philosophical studies of feminism that scholars have somewhat widened their vision to include children, notably by considering children as people whose rights should be respected.
>
> Mayall, 2002, p169

Childhood, it argued, is a social construction that is not determined solely by biological factors.

> The immaturity of children is a biological fact of life but ways in which this immaturity is understood and made meaningful is a fact of culture. It is these facts of culture which may vary and which can be said to make childhood into a social institution.
>
> James & Prout, 1997, p7

Two additional concepts are useful to discuss in further detail at this point. They are the notions of agency and of capacity.

2.2 Agency

Traditionally, children were seen as something 'other than' or outside of society, who needed to be moulded and shaped in order to fit in. This 'negatively defined person' (Alanen, 1988) awaits a process of being brought into society. This process, socialisation, was the responsibility of adults (parents, teachers etc.) and suggest, once again that childhood is 'a waiting place on the journey towards the ultimate goal of adulthood'.

> The original concept of socialisation also contains an assumption of the polarity of human nature between an uncivilised, unsocialised side and a civilised and socialised side. Here the child was 'naturally' located on the uncivilised side, as a being yet to be socialised in the power field of social forces.
>
> Alanen, 1988, p57

Alanen argues that the structural position of power that adults maintain over children results in children modelled as passive objects rather than as active participants in understanding, defining and shaping their environments. She put forward an alternative view in which children are seen as social actors.

Evidence has been put forward of children's own capacity to form an opinion, to voice that opinion, and to make sometimes quite complex and sophisticated judgements about situations. (Such & Walker, 2005; Larkins, 2009: Frankel, 2007). An alternative discourse about the concept of child has been put forward.

> We argued that the child in the dominant discourse was understood as private and dependent, needy, weak and poor. The child in our alternative discourse is social and inter-dependent, our image of the child strong, powerful, competent

> and, most of all, connected to adults and other children. Within our alternative discourse, children are understood as citizens, members of a social group, agents in their own lives and as co-constructors of knowledge, identity and culture, constantly making meaning of their lives and the world in which they live.
>
> Within this discourse, childhood is related to adulthood, but not hierarchically. Rather childhood is an important stage of the life course in its own right.
>
> Moss & Petrie, 2002, p100

This alternative discourse suggests that the child is understood as strong, competent and a powerful pedagogue. Caution is recommended in underestimating the power of agency.

> Failing to accord children agency works to underestimating their own capacity for making morally responsible choices, and denying them the opportunity to do so in practice. Their behaviour is dealt with according to rules that are not of their making.
>
> Smith, 2009, p 254

And, there is a clear link between those who possess rights and can, therefore, exercise agency.

> Rights are important because those who have them can exercise agency. Agents are decision makers……As agents, rights bearers can participate. They can make their own lives, rather than having their lives made for them. And participation is itself a fundamental human right. It enables us to demand rights.
>
> Freeman, 2011, p 22

Freeman (2011) sets out a clear case for the relationship between the conceptualisation of childhood and the importance of rights and, in this case, the reason that children have been denied rights for so long. One of the main reasons he puts forward for denying children their rights is that childhood is still considered to be preparation for adulthood, pre-adult, not quite adult and, therefore, not quite human. It is, therefore considered by some that children lack the capacity to be human and, therefore, not yet entitled to human rights.

The two concepts agency and capacity are linked. Oswell (2013) describes this link and provides an analysis of the historical and sociological context in which the debates have been taking place.

> And agency at some basic level refers to the capacity to do things. Thus, children are conceptualised as beings who have the capacity to do things in the world, where that doing may be physical, cognitive, emotional or 'other', but such that that 'being able to do' implies that children are not passive 'blank slates'.
>
> Oswell, 2013, p 53

Larkins (2014) also sets out a case for children as citizens and her research explores children's agency and their individual and social contributions.

> Children also enact themselves as citizens through practices at least as diverse as negotiating rules of social coexistence (whatever this may be), contributing to socially agreed good, and fulfilling their own rights.
>
> Larkins, 2014, p 12

2.3 Capacity

Lansdown (2005) discusses what she describes as 'evolving capacities' which, she suggests is a way of conceptualising children capabilities. This, she suggests, recognises their ability to understand, comment on and influence decisions that are being made whilst not forcing too much responsibility or independence before children are ready. With regard to the UNCRC Lansdown states:

> The concept of evolving capacities is central to the balance embodied in the Convention between recognising children as active agents in their own lives, entitled to be listened to, respected and granted increasing autonomy in the exercise of rights, while also being entitled to protection in accordance with their relative immaturity and youth.
>
> Lansdown 2005, p ix

Whilst there are clearly issues about children lacking experience, by virtue of the fact that they have had less chronological time to gain experience, this does not necessarily translate into children lacking the capacity to have a valid view or being able to voice an opinion.

> It is not therefore an inherent lack of competency or maturity which inhibits children from having a say and influencing law and policy; but rather this is the consequence of inequalities in power and social relations, with adult interests exerting material control over children's lives in ways that are in fact recognised by children themselves.
>
> Smith, 2010, p 91

Evidence of children's ability to make mistakes and lacking experience is cited as a reason for denying children their full entitlement as rights holders (Cordero Arce, 2012). It is somewhat ironic that one of the original intentions behind the drafting of the UNCRC was to 'put right the wrongs we do to children with our short sighted economic policies, political blunders and wars' (Hammaberg, 1990).

Discussions about children's capacity, particularly their capacity to make well informed decisions about issues, makes interesting reading. There are those who view children as incompetent, innocent by-standers who lack the capacity and knowledge needed to make decisions (discussed in Qvortrup et al., 1994) and there are others (Alderson, 1993) who present evidence of children's ability to make very well informed and sensible decisions about their own welfare. The implication that all adults possess competence is also, rightly, called into question.

Referring to Alderson's work, Freeman states:

> Her work is also significant for bringing out the importance of a child's experiential knowledge – too many who are prepared to link children's rights to knowledge and understanding see this in terms of book work knowledge, which is of course, although they rarely see this, not present in the lives of many adults whose competence is taken for granted.
>
> Freeman, 1998, p 441

There is plenty of evidence over time of adults' inability individually and collectively to make well informed decisions.

> History offers convincing illustrations of the inadequacy of adult decision-making: it is little more than a catalogue of blunders. War, inequality, famine,

> racism, injustice are some of the fruits of adult deliberation and choice. It is hard to imagine a worse track record.
>
> To deny children the right to make mistakes would deprive them of a right which adults have exercised extensively. It would be hypocritical.
>
> Franklin, 1995, p 11

What is considered, therefore to be civilised society, one that children are being shaped and moulded to emerge into as fully rounded law abiding adults is, of course, itself a socially constructed concept.

> The civilised society, of course, then proves to be the society of adults.
>
> Alanen, 1988, p 57

The arguments that children lack competence and that they make mistakes do not stand up as reasons for withholding children's right to be involved in decision making or indeed for failing to enjoy the same full human rights as adults. Adults also make mistakes (see above) and this does not result in their rights being withheld in the same systematic way as exists for children. That children lack competence is a dubious argument as some children in some circumstances demonstrate an ability to make complex and sophisticated decisions and appear well equipped to tackle difficult moral issues (Mayall, 2002). In an article that reports on research with primary school children Frankel (2007) discusses their understanding of the difference between right and wrong.

> It is the need to move beyond issues of age-based competence and the restrictive position laid out above that drives the rest of this article, as it explores ways of

> engaging with children as social agents, seeking a greater understanding of the way in which they experience issues or morality within their everyday world.
>
> Frankel, 2007, p 5

Punch (2002) argues that many of the questions about children's competencies stem from their 'marginalised position in adult society or from our own adult perceptions of children rather than being a reflection of children's competencies'.

Smith (2010) highlights the inherent dilemma in asserting the notion of the autonomous rights-bearing citizen whilst also challenging the idea of the adulterisation and responsibilisation of children.

> ...it is interesting that those who argue for the recognition of children as autonomous rights-bearing citizens also tend to advance the argument that these rights should be realised in the form of special treatment, and non-application of the full force of adult criminal law in the event of any wrongdoing.
>
> Smith, 2010, p 68

Freeman (1998) sets out the case for the study of both childhood, as a social construct, and also of children's rights and he suggests that each can learn something important from the other. He suggests (2007) that competency is a flawed basis for determining who should hold rights as not all adults are 'competent', and therefore the neat binaries of adult/child, competent/incompetent are deconstructed and an alternative theorisation of rights and citizenship may be more appropriate.

There is no definitive description of citizen or citizenship and, as with rights, discussions continue about whether it is a legal status within society or something more about agency and active membership of a community. In the UK 'citizenship' was

introduced into schools in the late 1990's as part of the National Curriculum, with the notion that teaching students about becoming future citizens will somehow a) tackle the perceived political apathy amongst the next generation and b) would equip students with political literacy and c) mould students into model, responsible adult citizens of the future. However many authors challenge the idea that it is a subject that can be taught and suggest instead that it is connected to how individuals experience citizenship.

> Learning citizenship is inseparable from the practice of it.
>
> Cairns, Kemp & Williamson, 2005, p 2

Promoting children's participation rights has been seen as a way of constructing children as 'citizens now' rather than 'citizens in waiting' or 'citizens in the making' who only achieve full citizenship when they achieve political maturity. The concept of active citizenship suggests a process of the child asserting her citizenship and both her rights and responsibilities as a citizen. Those who assert that children are not yet fully citizens or that they are not rights bearing citizens also discuss the concept of capacity and evolving capacities asserting that only once fully evolved (whatever that might mean) can a child achieve citizenship.

I am persuaded by the concept of 'differently equal' and the difference centred theorisation of children's citizenship rights (Moosa-Mitha, 2005) in which children's right to equality addresses their rights to belong as differently equal members of society. By arguing that children are citizens, with rights and that they should be treated equally supports the conceptualisation of child as citizen, not simply within the binaries of child/adult or devil/angel.

However there are other challenges to the status of citizenship. Drake and Henley (2014) write about the false dichotomy between 'victim' and 'offender' suggesting that victim's rights are sometimes advocated at the expense of offenders' rights.

> Standing (2011) deploys the term 'denizens' to describe those members of society who do not possess the full range of entitlements that citizens do (that is social, political, economic and cultural rights….. Issues of rights and citizenship (or denizenship) are, therefore inextricably linked with issues of criminal justice.
>
> Drake & Henley, 2014, p7

2.4 Rights Frameworks

The implementation of the UNCRC has created a clear rights framework within which public services and 'administrative proceedings' are expected to operate. Whatever the criticisms and misgivings about the impact on the rights discourse and enforceable rights for children, what it does provide is a set of standards within which services can be audited. The UNCRC is recognised as an important international children's rights instrument and, although not without criticism, it does provide a clear set of principles and a rights framework within which services and agencies are expected to operate. Use of these international standards within the youth justice system will be discussed in Part II.

Goldson & Muncie (2006) in Gray (2011, p 245) have, for example, advocated 'mapping the contours of a principled youth justice informed by human rights 'instruments' and the Children's Rights Alliance for England (CRAE, 2009) has spearheaded several campaigns to have the 1989 UNCRC incorporated into domestic law.

There is a contested debate about children's rights, and children's human rights including, for example, alternative views about the status of the UNCRC as suggested above. These will be explored in more detail below.

Ratification of the UNCRC, it can be argued, is a convenient way of deflecting the heat from the children's human rights agenda by allowing signatories to make claims to progress (specifically with the assertion of their Article 12 participation rights) whilst at the same time there is an apparent unwillingness to tackle serious and persistent children's human rights violations.

> Defending the human rights of children involves a willingness to tackle the problems from both the bottom and the top, i.e. identifying effective ways of promoting good practice as well as countering violations. If the children's rights community allows the worst violations to go with only meagre response, this will inevitably be seen as reflecting insufficient commitment to the human rights cause.
>
> Cantwell, 2011, p 51

However whilst acknowledging the shortfalls of this framework, the UNCRC is the most obvious rights framework within which this study has been located alongside the stipulations set out in the Human Rights Act, 1998.

> The CRC has given greater visibility to the way in which children's rights have been considered at a local, national, trans-national and international level, but it has also given a legal and symbolic framework within which to consider the ways in which children experience their childhoods.
>
> Tomás, undated, p 5

2.5 The child's voice

It is suggested (Freeman, 2011) that the UNCRC accepted children as both 'beings' and 'becomings' and because of this it gives them a 'voice'. The UNCRC accepts that children have something to say and gives them a right to express this freely on all matters that affect them. The distinction between the child's voice, her right to express herself and her participation rights is also important. The child's voice is her right to express her view freely and to be listened to, a child's participation rights are rights to be actively involved in all matters affecting her own and the lives of others. In order to be involved in decision making processes and to be involved in all matters that affect a child she must be supported to have a voice.

Lundy (2007) provides a framework for conceptualising Article 12 participation rights as being constituted in four separate parts:

- Space – Children must be given the opportunity to express a view
- Voice – Children must be facilitated to express their views
- Audience – The views must be listened to
- Influence – The view must be acted on as appropriate

It has been recognised that, in order to both acknowledge children's human rights and also to ensure that improvements are made to the life circumstances and outcomes for children, that they must have a voice.

> If we seriously mean to improve life conditions for children we must, as a minimum pre-condition establish reporting systems in which they are heard themselves as well as reported by others. This is a very modest demand of, or on

behalf of, a population group which at a societal level is mute, and is being kept mute by adults, the dominant group.

James & Prout, 1997, p101

Whilst all human rights are considered to be 'indivisible, interconnected and interdependent' (Lundy, 2007) the UNCRC was considered to have introduced and enhanced the child's right to be heard.

Article 12 set out clearly an expectation about children's right to express an opinion and to be heard, to be given a voice.

1. States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

This Article 12 right to a voice, or right to participate in decision making set off an industry of children's rights projects, participation initiatives, children's rights/participation officers, and the appointment of a Children's Commissioner. There is little doubt that the profile of children's rights and in particular their right to participate was greatly enhanced by the UNCRC. It represented a paradigm shift in thinking about children (Invernizzi & Williams, 2011). Whether, in fact, this has had any influence on shaping the way that children are perceived or that children and childhood

are socially constructed is a moot point. There was a significant push in the late 1990's/2000s to involve various groups including children in policy making, i.e. community safety, social care and health. Much of it ended up being about political imperatives, it was frequently tokenistic and seldom led to meaningful change.

Some feminists would make the point that we need to move beyond simply enabling (women's) voices to be heard, it should be about listening to voices as a first step to enabling change. Stanley & Wise (1993) argue that feminist research is 'an emancipatory inquiry focusing on enlightenment and social change.'

Whether, in fact, raising the profile of children's participation rights has had any impact on recognising their moral or legal rights, is questionable (Scraton & Haydon, 2009; Smith, 2010). And, perhaps more importantly, whether children can identify any difference i.e. any social change, is critical.

Beal (2014) acknowledges the importance of listening to the voices of children. In this instance the voices of two children, Jason and Harry, as they transfer from secure institutions and, she suggests their desistence from offending behaviour. The inclusion of their voice, she suggests, is important in order to take account of multiple perspectives to better understand the holistic, complex and changing needs of children.

2.6 Children's human rights

The concept of children's human rights is a relatively recent advancement. In the early 70's there is some evidence that 'children's rights were considered to be virtually a dirty word', even by organisations such as UNICEF and Amnesty International (Cantwell, 2005), and that the concept of a rights-based approach was only adopted in 1993 at the Vienna World Conference on Human Rights.

Even today children seldom know about or talk about rights and few have heard of the UNCRC. However children do have an almost innate sense of social justice and do talk about what is (or is not) fair, and what is just or unjust. They understand respect or lack of it and they do know the difference between right and wrong (although not necessarily in a legal sense). So whilst the concept or existence of rights may not be at the forefront of children's understanding of the world they live in, how they feel about rights and injustice is immediate and significant.

> ….they talk from their earliest years in rights terms – of protection, provision and participation, of fairness, justice, respect for others, and interdependence.
>
> Mayall, 2002, p 171

2.6 So, then what are rights?

There are different ways of describing rights. There are natural rights, legal rights, civil and political rights, universal, situated and process rights, human rights and then those that apply to specific groups of people e.g. children's rights, disability rights etc.

Legal rights can be described as those that are enshrined in a country or state's legal system. *Natural rights*, also described as moral or inalienable rights, are those that apply to everyone universally and are not dependent on legislation e.g. the rights to freedom or to self-determination. *Civil or political rights* refer to those rights and freedoms that protect individuals from unnecessary intervention or action by government's or private organisations and which ensure that citizens are protected from discrimination on the grounds of race, gender, disability, sexual orientation etc. Civil rights are often also written into a country's constitution or enshrined in its legislation and are also, therefore, legal rights.

The word ‘right’ in English, as well as equivalent words in several other languages has, as Donnelly (1989) stated, two central moral and political senses: rectitude and entitlement. In the first sense, rectitude means something being right: that an action is right. In the other sense, rights are an entitlement i.e. someone has a right. Franklin (2002) further divided into two parts: moral/natural and legal rights. The distinction between these two is that a legal right is an entitlement which is acknowledged and enforced by an existing law in a specific state or polity. A moral right enjoys no legal endorsement per se: these are rights all human beings should possess by virtue of their common humanity. The claim to a moral right does not depend on the legal arrangements of particular states but is, as Franklin suggests, a universal entitlement of human beings.

Cipriani (2009) explores the distinction between liberty rights and protection rights and the role of competence. He describes the ways that ‘adult society interprets and constructs the meaning of childhood, and confers certain legal rights to children, or not, based on assumptions about children’s competencies’. This draws attention to the issue of conflicting rights, particularly in relation to children i.e. their right to protection versus their right to independence. There is a tension between these rights which, I would argue, is a healthy tension that needs to be acknowledged but which cannot necessarily be resolved. It places a responsibility on, in this case, adults to carry that tension and to both promote and uphold children’s right to protection and to independence at the same time.

The clearest manifestation of human rights today is the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948. This declaration, according to Donnelly (1989), encompasses a wide range of personal, legal, civil,

political, subsistence, economic, social and cultural rights. It implies that human rights are enshrined in international legal instruments and consensus documents, that they are not promises but entitlements, demanding national and international response.

In 1959 came the second Declaration of The Rights of the Child although, as Freeman (2000) pointed out, these were aspirational and the emphasis was paternalistic. Whatever the motivation it's reach has been comprehensive with 191 countries throughout the world having signed and ratified the 1989 UNCRC it has become the most universally accepted human rights instrument in history. The most significant progress *legally* regarding children's rights is the incorporation of the European Convention on Human Rights into English domestic law in 1998 (The Human Rights Act, 1998) which became operational in 2000 and does not make a distinction on the basis of age.

There are areas of disagreement within the children's rights field on the subject of the UNCRC (already cited above). There are those who are convinced that the UNCRC promotes and protects the rights of all children in the UK. There are others who agree that it is a useful set of guidelines and principles and sets out an 'aspirational gold standard' (Lyons, 2007) to which all public bodies should aspire. Nonetheless it has no teeth i.e. as it is not enshrined within domestic law in the UK, it is not enforceable. Unlike the Human Rights Act 1998 or the Data Protection Act 1998 which are more meaningful when it comes to protecting the legal rights of children.

Lyon's (2006) argument is that greater attention should be paid to children's legal rights under European and domestic law rather than the rights set out in the UNCRC. She questions why here has been so little attention to the legally enforceable rights

contained within the European Convention on Human Rights (incorporated into domestic law in the UK through the Human Rights Act, 1998).

> A great deal more attention needs to be focused on the ECHR if we are to enable children and those who work with them to achieve the goal of the equal recognition of children's rights, which the UNCRC has so successfully encouraged us to espouse.
>
> Lyons, 2007, p152

Children's rights have a somewhat shorter history than the principle of human rights (read adult's rights). This is because children in all societies are denied basic human rights which adults take for granted. Freeman (1997) points out that thinking about children's rights has come a long way. In the 1970's it was defined as a 'slogan in search of definition' by Rodham (1973) when she was Chairperson of the US Children's Defense Fund.

This field has been discussed, debated, analysed and fought over in academic literature and political discussion during the last 40 years. To understand why children are deprived of rights compared with adults, there needs to be an understanding of childhood which suggests that while an adult appears to be human, a child is often considered incomplete and immature (see above). Some suggest that children should not be rights holders for these very reasons.

Purdy claimed that children cannot be rights holders because they are not autonomous decision makers:

> ..not that adults also vary tremendously in the extent to which they possess these attributes….an individual's autonomy profile can consist of many varying degrees.
>
> Purdy, 1996, p 149

However she claimed that autonomous decision making is not an all or nothing enterprise, but develops gradually over time.

> Deciding whether people are autonomous is therefore not a matter of picking out some magic moment at which they become so, but rather of deciding where to draw an admittedly somewhat arbitrary line on a continuum.
>
> Purdy, 1996, p 150

That children should be rights holders is still an unpopular assertion in some quarters and, unlike the position of adults, is considered to be dependent on children meeting certain conditions including good behaviour. A relationship between rights and responsibilities has been promoted which suggests that children can assume certain rights as long as they also meet some responsibilities. No such prerequisite is placed on adults. This is particularly significant when considering the position of children who are in conflict with the law because of their challenging behaviour or so-called irresponsible actions. Rather than being universal and inalienable, therefore, children's rights and the extent to which children can enjoy their rights appear dependent on the way they are conceptualised and inferred by adults.

> In short children are increasingly represented as 'victims' or 'villains'. These images of children have proved influential in shaping public opinion and government policy and created a political climate which is less conducive to the

> achievement of certain rights, especially participation rights. The 'quiet revolution' in children's rights, which some observers believe has occurred, has been accompanied by a noisy counterblast from the media (Van Bueren, 1996).
>
> Franklin, 2002, p 16

Murphy & Whitty (2013) discuss the historical relationship between criminology and human rights. This is of significance to this study in that there is a suggestion about the emancipatory role of human rights.

> Human rights are being allocated an emancipatory role here: for the purposes of publicising ignored forms of victimhood, and for their perceived potential in generating both a different criminological awareness and a language of condemnation.
>
> Murphy & Whitty, 2013, p 570

The inter-relationship between criminology, law, human rights and children's rights is significant in the way that it impacts on children and childhood. Freeman (1998) has for some time written about the importance of bringing together the sociological study of childhood and the study of children's rights. In one paper he draws attention to the common ground between the two areas of study which include, for example, the recognition of children as possessing agency and of being persons not property 'subjects, not objects of social concern or control; participants in social processes, not social problems' (Freeman, 1998, p 436).

> The children's rights movement gives children new opportunities to speak to correct what is partial (in both senses), to throw light on children's lives, the

> wrongs from which they suffer, on how they perceive the world, and the institutions which define and structure their existence.
>
> Freeman, 1998, p 443

One aspect of personhood, citizenship, involves three kinds of rights – political, civil and social (James & James, 2004, p 35).

> Children remain marginalised and treated as non-citizens by the system of surveillance and control through which 'childhood' is protected as a social space in the life course.
>
> James & James, 2004, p 37

Moosa- Mitha's (2005) conceptualisation of children as differently equal and of the lived realities of their everyday lives and, Larkins (2014) exploration of children's citizenship suggest that this is a similarly complex and contested field. Nolan (2010) discusses the concept of the child as democratic citizen whilst acknowledging the challenges that are faced by children in trying to assert their rights as such.

> This is due to the fact that the civil and political rights accorded to adults under international law are not linked to adults' "evolving capacities".
>
> Nolan, 2010, p 4

Scraton and Haydon (2009) argue that there is a considerable gap between the rhetoric and reality of children's rights and that in raising the profile of the children's agenda in the UK, following the ratification of the UNCRC has, in reality, allowed successive governments to appear to be doing something whilst actually doing very little to promote or uphold the rights of children. This is an important issue that is explored in more detail below.

> If the 'rights agenda' is subject to ideological challenges and state 'management', is its value solely symbolic?
>
> Scraton & Haydon, 2009, p17

There is, therefore, a call to attend to the human rights of children and to move the debate forwards and retrieve it from the cul- de- sac of children's rights. Cantwell (2011) discusses what he refers to as the 'counter-productive rights inflation in the children's rights sphere', particularly with regard to the interpretation of Article 12, and calls for greater attention to be paid to human rights issues within the children's rights agenda. Others refer to social practices that have been carried out under the auspices of Article 12 participation rights as 'false emancipation'.

> ….in the case of the children's rights discourse, there is a huge ambiguity concerning not only the rights, but also the facts behind them. The (moral) capacity of children to be citizens in a strong sense (full rights holders and duty bearers) is not only challenged but generally denied, arguing their incompetence, irrationality and/or immaturity.
>
> Cordero Arce, 2012, p 366

Cordero Arce's argument is that the current discourse on children's rights relies on an adult construction of the world of children and childhood and that it is based on a picture of the child as ignorant, innocent and needy. He suggests that embracing children's own realities creates an emancipatory discourse on rights which may take us a step forward. He argues for making 'children's rights dependent on children's voices and on the embodied reality of children's voices', and states that it is both possible, and indeed imperative to rebuild a strong conception of the rights of children.

Others take this further by arguing that by asserting the *human* rights of children i.e. by making a clear statement about equality with adults is the only way forward.

It can be suggested that, in fact the ratification of the UNCRC has, in fact caused a backwards slide to a pre CRC era.

> ….a problem has gradually been surfacing: too often, these rights are not looked at as children's inalienable *human* rights but simply as ….*children's rights*.
>
> Cantwell, 2011, p42

In the original drafting of the UNCRC it is clear that children were seen to be fundamentally different to adults and that children's issues were not considered to fall within the scope of human rights. It will come as no surprise that children themselves were not involved in drafting, or producing the documents and that the UNCRC is based entirely on an adult view of the world.

But, clearly adults and children are different, how then can we rationalise the need for equality and autonomy when insisting on human rights. One argument that has been put forward is that children have, and should have, additional rights by virtue of them being a child.

> If we are to make progress we have to recognise the moral integrity of children. We have to treat them as persons entitled to equal concern and equal respect, entitled to have both their present autonomy recognised and their capacity for future autonomy safeguarded. This is to recognise that children, particularly younger children, need nurture, care and protection. In other words, children have rights that adults do not have – additional rights.
>
> Freeman, 2011, p31

The concept of additional rights is a useful and persuasive one that we will return to in Chapter 7.

The ambiguities between legal and moral rights can be illustrated with regard to particular groups of children, such as those in custody. In terms of legal status the position of children in custody is complicated, resulting in a lack of clarity about their legal rights and entitlements as demonstrated by Hollingsworth (2012).

It has been argued that the UNCRC has a role in creating the opportunity to audit state parties compliance by establishing a set of international standards (Killkelly, 2008) and also that it has created a foundation for strategic litigation (Kilkelly, 2011 in Invernizzi & Williams, Eds.). The case described in Stone (2014) demonstrates the potential for such litigation.

The complex interplay between individual and collective rights is particularly relevant to this study. Each child has a right to be treated with dignity and not be subject to inhumane treatment (particularly relevant when considering the issue of physical restraint). However all children have a right to protection and safety and not to be living in a situation where their safety is compromised i.e. where they may be at risk from other children (in custody) or from those who care for them (prison staff). This is a constant dilemma in this context. To assert that an individual's rights should take precedence over collective rights or vice versa is indicative of another significant tension.

Alvaro Gil-Robles, whilst presiding as the Council of Europe Human Rights Commissioner, commented during a visit to the UK:

> …it is perhaps worth emphasising that human rights are not a pick and mix assortment of luxury entitlements, but the very foundation of democratic societies. As such their violation affects not just the individual concerned, but society as a whole; we exclude one person from their enjoyment at the risk of excluding all of us.
>
> Gil-Robles, 2005, p 5

A number of Articles from the UNCRC (Articles 37, 39 & 40) in particular have significance for children in detention. The UNCRC and Human Rights Act 1998 will be examined in more detail in below.

Part II

2.11 Introduction

Part II investigates the literature in the following fields: youth justice, the secure estate and the use of physical restraint. It sets out the context in which this study was conducted and asserts a case for developing a rights-based framework for the care of children in custody.

How the child, children and childhood are constructed and perceived has repercussions for those children who break the rules, who do not conform or who do not fit i.e. those that challenge the status quo. Children who break the law pose such a challenge. In addition to this what constitutes law breaking as opposed to or including anti-social behaviour is also relevant to the debate. The concepts of: offender; criminal; and delinquent are similarly socially constructed and, therefore, open to external influence and pressures. How children who offend are treated varies in time, place, history and culture.

> Children have been constructed through policy not as citizens but as objects of increasingly repressive modes of governance. As adult anxiety and punitive desire escalate, the (metaphorical) body of the delinquent is carved up to serve popular appetites, and effectiveness and rationality are increasingly subsumed under ideological imperatives.
>
> Brown, 1998, p 116

Society's response to children who offend is characterised in two distinct ways recognised as the justice/welfare debate. Children are *either* seen as victims themselves in need of support/counselling/treatment and whose welfare is at risk *or* they are viewed as responsible and culpable and therefore in need of correction and punishment. I argue that this is an oversimplification of the way that children and 'criminal children' in particular are conceptualised and that the position of such children is more complex and nuanced.

There are clearly wider debates within criminal justice about how best to respond to child offending including debates about: the minimum age of criminal responsibility; whether children should be treated primarily as children or as offenders; the concept of the best interest of the child and so on. This also changes in time and as a response to particular events/processes/people and politics. For example the shift for juvenile justice teams to become youth offending teams following the 1998 Crime and Disorder Act, demonstrated a change in the political ideology and the motivation behind the changes in thinking about how best to deal with child offending. Whether or not children who break the law should receive the same treatment and penalties as adults, whether they should receive custodial sentences or welfare based community sentences are also relevant debates which are influenced by external forces including the media, political ideology and by specific events (such as the murder of toddler James Bulger in 1993 by two 10 year old children).

How a society treats its' children and the way that society conducts itself says something profound about humanity.

> Thus the way we treat our children is indicative of the state of our social structure, a measure of the achievement of our civilization or even an index of

> the degree to which humanism has outstripped the economic motive in everyday life.
>
> Jenks, 1996, p 61

Historically the UK has incarcerated more children than almost anywhere else in Western Europe and, although the numbers of children in custody have been falling since the mid 2000's the way that children are treated when they are in custody has changed very little. The debate, therefore, about responses to offending and whether custodial or community sentences work are also relevant.

> Similarly, the way that we control our children reflects, perhaps as a continuous microcosm, the strategies through which we exercise power and constraint in the wider society.
>
> Jenks, 1996, p 61
>
> Despite the recent drop in the number of children in prison the number of incidents of restraint has increased to 8,419 incidents in the last year – equating to 23 incidents a day.
>
> Ministry of Justice/ Youth Justice Board, 2013

Once children are deprived of their liberty how they are perceived and, therefore how they are treated also says something about the way that the child has been constructed (as victim, perpetrator or citizen) and also about the way that the offending child has been constructed (as in need of help, or punishment), and the system as designed for either retribution or restitution. As described above, currently children who are locked up experience high levels of use of physical restraint (Ministry of Justice, 2013). There is evidence that experiencing and or witnessing the use of physical force particularly the

use of physical restraint can be traumatic for the child and that there is a high level of self- harm, suicide and occasionally death following its use. There is strong evidence to support claims that the use of physical restraint is contrary to the human rights of children.

Investigations into the use of physical restraint have been conducted and, latterly these investigations have included the voice of the child i.e. children's experiences of restraint have been explored. However two things stand out. Firstly the use of restraint is accepted as 'a given' within these investigations. And secondly there is no attempt to come up with an alternative way of responding to challenging behaviour. This section will set out the main findings from these investigations and identify the gaps. It will also point to some of the evidence that exists in other settings (mental health, learning disability, paediatric medicine) which may help to illuminate some of the issues.

2.12 Youth justice

Children who break the law bring into sharp focus the differing perspectives on the status of child and concept of childhood and on the issue of rights. Children who are alleged to have broken the law in England and Wales are held accountable for their actions through the criminal justice process which means they are subject to an adversarial system that prioritises the finding of guilt or innocence and sentencing for a particular offence.

The history of the English system of youth justice has been described as an oscillating contest between punishment and welfare and between deterrence and rehabilitation (Smith & Utting, 2011). It is possible to demonstrate how these competing views have impacted on attitudes, legislation and policies that have attempted to address juvenile offending.

Hendrick (2006) in Goldson & Muncie (Eds.) provides a useful summary of the histories of youth crime and suggests that attempts to understand juvenile delinquency and crime can only be understood within the broader socio-political context.

> In place of the child 'savage', the period c.1880-1914 had a new spectre: 'Hooliganism', a term used to describe the 'loutish' behaviour of working class youth, and portrayed by the press as a particularly virulent form of urban unrest.
>
> Hendrick, 2006, p 7

As with the concepts of the child, and childhood the conceptualisation of the 'child offender' cannot be understood in isolation. Hendrick describes the emergence of the 'victims' or 'threats' dichotomy and the creation of different responses to juvenile offending including responses that were intended to rescue or save the child or those that were designed to punish. He also explores the structural and administrative procedures which were responses to social and political change around the turn of the century (early 1900's) have determined how social constructions of children and crime are put together.

Goldson (2004) explores how the construction of children as either victims in need of special care and protection or as threats requiring control and punishment has impacted on the systems, organisations and institutions designed to care for and or control this cohort of children. His suggestion is that, in reality, the children are mostly from the same disadvantaged and difficult backgrounds and that institutional responses designed to *either* protect, treat, and care for children *or* to punish, rehabilitate and reform children are often misguided. More recently Drake and Henley (2014) observe that what they describe as the 'false dichotomy' between victim and offender impacts on the way that their rights are observed.

> Further by politicising the issue of 'victims' *versus* 'offenders' rights, a clear delineation is drawn between those who are 'deserving' of legal protection and those that are not. Such delineations encourage narratives that construct the 'criminal' or the 'prisoner' as having forfeited their rights and are in keeping with discourses that define lawbreakers as 'other'.
>
> Drake & Henley, 2014, p 142

And Garland (2001), referring to adult prisoners, concludes of the, 'society – offender' relationship, that the interests of offenders are viewed as fundamentally opposed to those of the public.

> In consequence, and without much discussion, the interests of the offender and even his or her legal rights, are routinely disregarded.
>
> Garland, 2001, p 180

In terms of youth justice policy and practice there is evidence that the way that children and childhood are constructed together with the way that the child 'offender' is constructed is also further influenced by social and political forces.

> In every county and in every locality, youth justice appears to be 'made up' through unstable and constantly shifting alliances between neo-liberal, conservative and social democratic mentalities. In terms of policy, the authoritarian, the retributive, the restorative and the protective jostle with each other to construct a multi-modal landscape of youth governance.
>
> Muncie, 2005, p 57

The minimum age of criminal responsibility and the concept of *doli incapax* (deemed incapable of forming the intent to commit a crime especially by reason of age) which

have been significant issues in the state's response to youth crime are, themselves, politically motivated.

In the late 1990's when there was a suggestion that *doli incapax* should be removed as a legal protection for children, Cavadino, then Chair of the Penal Affairs Consortium, made clear the dangers of this move.

> The *doli incapax* rule has the merit of making the police, prosecutors and the judiciary stop and think, however briefly in some cases about the degree of responsibility of each individual child. It should not be abolished unless such a change is also accompanied by a substantial raising of the UK's unusually low age of criminal responsibility.
>
> Cavadino, 1997, p 170

However such warnings were ignored and by removing *doli incapax* (in the Crime and Disorder Act 1998) this extended punitive and in particular custodial sentencing to a younger age group, signalling a significant change in attitude towards children in the late twentieth century.

> The MACR and the doctrine of *doli incapax* is politically motivated and should more realistically be viewed as a policy decision about at what age any state should choose to subject its children to the criminal trial and punishment process. They reflect rather more a state's political view of youth crime and rather less any realistic assessment of the age at which children can actually form criminal intent.
>
> Montgomery & Kellett, 2009, p135

There continues to be much debate about MACR and assertions about the age at which it should be set in any jurisdiction. England currently has one of the lowest ages, at 10 years, when compared to other countries, (see Cipriani, 2009) for comparisons. Cipriani discusses in detail the issues around the minimum age, children's rights and deprivation of liberty. He concludes that the research suggests that the age of 12 should be the minimum, and that a children's rights approach, combined with early intervention are necessary to preclude arrest, deprivation of liberty and related legal sanctions.

Goldson (2006) in Goldson & Muncie (Eds.) explores the history of penal custody for children which also indicate that the extent to which custodial remands and sentences have been used and the 'actual size of the child prisoner population at any given time, have fluctuated across history'. Goldson describes the alarming expansion of the incarceration of children leading up to and including during the 1990's. This expansion in the use of child custody is attributed to what was described as a 'punitive turn' (Goldson, 2005; Bateman, 2012) following the moral panic associated with the murder of James Bulger in 1993.

In addition to the increase in numbers of custodial sentences there was disturbing evidence of a 142% increase in child remands, an increase in the length of sentences and also an increase in the detention of children under the age of 15. Alongside this was evidence of a gender difference in the way that girls are treated in the criminal justice system as well as evidence of racism within the youth justice process and custodial regimes with continued over representation of black and minority ethnic children.

By 2008 the rates of incarceration of children in England and Wales was the second highest in Western Europe (Muncie, 2009). This was described as a 'new punitiveness' (Goldson, 2002) or as the 'punitive turn' (Goldson, 2005), which resulted from a 'culture

of control' (Garland, 2001). There has been a steady fall in the numbers of children receiving custodial sentences and of youth crime generally (see Allan, 2011; Bateman, 2011, 2012). This is not matched within the adult population and there are numerous explanations for this unexpected and significant fall including government targets and performance measures, financial restraints and 'an international phenomenon that is not fully understood' (Bateman, 2014). However this needs to be viewed within the wider context that the child custody population increased by 795% from 1989 to 2009 (Standing Committee for Youth Justice, 2010). As of July 2014 there were 1,122 children in custody (YJB, 2014).

In 2005 Muncie discussed the globalization of crime control and his concerns about the spread of punitive penal policies from the USA which, he suggests, have resulted in a diminution of welfare-based models of governance in favour of 'justice based responsibilisation and managerial strategies'. Muncie (2005, p38) described six interrelated themes which collectively result in an acceleration of the governance of children through crime and disorder.

They are:

1. Diminution of welfare
2. Adulteration
3. Risk factor prevention
4. Responsibilisation
5. Actuarial justice
6. Penal expansionism

Muncie also questions whether policies can be translated and replicated across different countries and cultures and he challenges whether universal international

conventions can be effective in the face of the homogenisation of criminal justice responses across the Western world.

Garland's (2001) analysis of the 'culture of control' which, he suggests, resulted from the changes in the social, political and cultural conditions which undermined the credibility of penal-welfareism has contributed to a new era of crime control.

Brown (2009) in Barry & McNeill (Eds.) outlines the changing landscape of youth and youth crime in the final decade of the twentieth century. She concludes with the need for children to be regarded as citizens.

> ….for 'rights' discourses of any kind are abstract and universalising: they do not speak to the specific power structures and conflicts that produce the criminalisation or the victimisation of children and young people.
>
> Brown, 2009, p 33

The demonization of children, as suggested above, is not new. There has been much discussion about the distinctions between the 'justice' and 'welfare' approaches (Goldson, 2004; Scraton & Haydon, 2002). Scraton and Haydon (2002) provide evidence of the lack of protection provided by the UNCRC for children in the criminal justice system and specifically in relation to the murder of James Bulger citing the 'retributive and vengeful prosecution 'of the two boys charged with his murder. This is indicative of the general lack of a rights perspective for such children.

> The demonization of young people in popular and political discourse was central to the classic analyses of 'folk devils' and 'moral panics' first conceptualised by Cohen (1972)…..who argues that 'stylised and stereotypical' media

> representations have 'serious and long-lasting repercussions for 'legal and social policy or even in the way society conceives itself'.
>
> Haydon, McAllister and Scraton, 2012, p 504

Smith (2010) explores the changing landscape of rights and justice and concludes:

> It is of particular interest that the specific recommendations of the UNCRC should be set within the context of a wider observation that may go some considerable way towards explaining the consistent shortcomings of UK governments in respect of the administration of youth justice.
>
> Smith, 2010, p 14

This wider observation includes the general hostility and intolerance of communities towards their children and the negative reporting of children by the media. This view, it is suggested, is underpinned by the view of children and childhood as villains, as dangerous and out of control, as a threat to society. Fionda's work (2005) analyses the criminalisation of children's behaviour and the implications for the social construction of childhood.

> The problem with labelling of young people is that, in an adult-centric society, it tends to be carried out judgementally, through fear of the young, and the label assigned to the majority of them is inherently negative.
>
> Fionda, 2005, p3

Fionda puts forward alternatives ways of labelling and responding to problematic behaviour that do not criminalise children and which do not buy into the divide between the 'devil' and the adult perception of the acceptable citizen, the 'angel'.

Bateman (2012) provides a useful summary of the issues associated with the minimum age of criminal responsibility (MACR), culpability and rights. He includes issues which have recently been reported that relate to the neuro-scientific analysis of the adolescent brain and children's behaviour and empathy towards others. These recent findings call into question issues around culpability in younger adolescents.

> By the same token, application of a criminal process, underpinned by notions of culpability that assume a capacity to engage in mature, adult oriented, forms of decision-making, is inappropriate and unjustified.
>
> Bateman, 2012, p 7

He goes on to conclude that:

> There is good evidence that children's capability to understand fully the criminal justice process in such a manner is limited.
>
> Bateman, 2012, p8

Indeed there is evidence from the recent involvement of speech and language therapists with children in the criminal justice system (Bryan, Freer & Furlong, 2007) that suggests it is a failure of children's understanding of what is being said to them that is preventing them from fully engaging in the process. This research concluded that 90% of the children involved in their research had left school before the age of 16 and that 66-90% had below average language skills, with 46-67% being in the poor or very poor group.

However this focus on a skills deficit or a lack of capacity leads us into difficult territory. Children lack capacity compared to whom? And, what about agency? The idea that a child lacks agency, that she is unable to think or act for herself, defies internal logic. If a

child is unable to think and act for herself clearly she cannot then also be held responsible for her actions, criminal or not.

Are we actually referring to a lack of knowledge and or experience rather than a lack of capacity? Buss (2009) suggests that, in relation to the issue of rights, the law should be cautious about capacity and competency arguments supported by theories about child development.

> In identifying what children *lack* that excludes them from the adult regime of rights and responsibilities, these theories also highlight what they assume adults possess that qualifies them for these rights and responsibilities.
>
> Buss, 2009, p 17

Children's competence and neurological immaturity has recently been put forward (Youth Justice Working Group, 2012), as a way of explaining their impulsive, risk taking behaviour and inability to engage in criminal justice proceedings. Indeed the new MMPR training refers specifically to the immaturity of the amygdala. However the evidence provided is somewhat contradictory and sparse and at odds with a system that promotes culpability, responsibility and consequences. It also cannot reasonably explain why some children become involved in offending behaviours and others do not or why it is only a select group of children who are incarcerated. This, I would argue, can only be explained by considering structural issues and social inequalities which result in only 'some' children's behaviour being scrutinised.

A report completed for the Office of the Children's Commissioner in 2012 (Hughes et al., 2012) discusses the prevalence of neurodevelopmental disorders amongst children in the secure estate. It suggests that there is a higher than average prevalence of

conditions such as autistic spectrum disorder, communication disorders and traumatic brain injury. These may result in difficulties with managing violence and aggression, understanding instructions, and developing relationships. The report concludes that there is a 'disproportionately high prevalence of a range of neurodevelopmental disorders in young people in the custodial estate'. Farmer (2011) also questions how culpable children are for unlawful behaviour and how competent they are to participate in the criminal justice system. Advances in neuroscience may also influence youth justice policy (Walsh, 2011) although there are inherent dilemmas with progressing in this way, the dual-use dilemma, which may both explain some aspects of behaviour but also may be used to predict future behaviour or to somehow 'prove' a point. The Royal Society (2011) reports on the potential for advances in neuroscience to influence or to offer insights to the law and suggests, for example, that it might raise questions over the age of criminal responsibility.

The new MMPR procedures which are being implemented across all YOI and STC provision is based on notions of the child's under developed reptilian brain, the amygdala. The theory suggests the following:

> The brain of a young person is different to that of an adult up to the age of 21-23. Before that age young people are more likely to react by using their Amygdala. This is basically a fight or flight mechanism which only makes emotional based decisions.

It goes on to state:

> The adolescent brain is wired differently, it cannot operate as an adult brain…..at best young people are learner adults.

MMPR, 2012, Vol. 2, p71-72

These revelations, however, pose a real dilemma to the call amongst rights activists for children to be treated as equals with adults. Is it possible to stake a claim for children to be treated the same as adults whilst at the same time calling for them to be treated differently on the grounds of age? Whilst objections have been raised about claims that children lack capacity and competence and, that they should therefore be assumed to be in some way in need of protection and guidance, it is also now being suggested that children do, indeed have limited capability to fully understand and engage in the criminal justice system or to have made fully informed rational decisions.

2.13 Conditions and treatment in custody

Goldson (2006) outlines the key issues in relation to the cohort of children who are imprisoned. Of the children who end up in either LASCH, STC or YOI there is ample evidence of mental health issues, learning difficulties, family breakdown, experience of the care system, living with domestic abuse (Justice Studio, 2014) and experiences of bereavement (Vaswani, 2014). Concerns have been expressed on a regular basis about the way that these vulnerable children are cared for in penal custody. These concerns have been expressed by the United Nations Committee on the Rights of the Child (2002, 2008), by the Chief Inspector of Prisons (2005) and by the Council of Europe's Commissioner for Human Rights (2005). Recent research comments on the damaging effects of incarceration on children, as well as the failure to address children's developmental needs and their criminogenic behaviour (Lambie & Randell, 2013).

Goldson (2009) in Scraton & McCulloch (Eds.) suggests that the history and practice of incarceration of children and the institutions in which they are and have been held is tantamount to institutionalised abuse.

> The history of such institutions is characterised by a catalogue of failure, misery, scandal, human suffering, abuse and violence, repeatedly reproduced through their regimes and standard operational practices.
>
> Goldson, 2009, p89

Goldson (2009) describes the process of 'othering', a process which is underpinned by both the demonization (child as a dangerous threat) and pathologising (child as a helpless victim) in the construction of children in conflict with the law. This, he suggests, serves as a justification for the violence of incarceration. The process of 'othering' which is consistent with the concepts of deserving and undeserving, welfare versus justice constructs described above. This process has serious consequences which, I suggest, deflect attention from the:

> …state responsibility and accountability (the excessive reliance on incarceration and the violent nature of penal regimes for children in England and Wales), but they also negate institutional culpability and obscure the physical, emotional and psychological violence intrinsic in child imprisonment.
>
> Goldson, 2009, p97

2.14 The use of physical restraint

There are various definitions of force and restraint as well as a variety of types of interventions which all result in the restriction of an individual's movement or the exercise of free will. These include: chemical, mechanical, environmental, technological and psychological (NPM, 2013). For the purpose of this study I explored the use of physical restraint only (as this is the most frequently used form of physical intervention

used across the secure estate) and will not investigate other forms of physical intervention or restraint (chemical or mechanical).

> The definition of physical restraint is: a restrictive physical intervention is defined as any occasion when force is used with the intention of overpowering or to overpower a young person. Overpower is defined as restricting movement or mobility.
>
> YJB, 2014, p 3

In a review of the use of physical intervention across Children's Services (Hart & Howell, 2004), the authors set out the definitions of physical interventions:

> PHYSICAL RESTRAINT is defined as the 'reasonable application of the minimum force necessary to overpower a child with the intention of preventing them from harming themselves, or others or from causing serious damage to property'. HOLDING would discourage, but in itself would not prevent such an action'.
>
> Support Force for Children's Residential Care, 1995, p 98
>
> Holding is distinguished from restraint by the degree of force required and the intention (Royal College of Nursing, 1999, p 2)
>
> Hart & Howell, 2004, p 8

The review also sets out the legal framework in which the use of physical intervention takes place. They include educational settings, health, police, immigration centres as well as the secure estate. Although the conclusions reached is that:

> Children may not only suffer physically: there is a risk of disempowerment and humiliation in being physically restrained, particularly if the child is given no opportunity to discuss what has happened.
>
> Hart & Howell, 2004, p 45

Once again however the authors conclude that 'we can never entirely eliminate the need for restraint in some situations, nor instances of malpractice' p 48.

The Carlile Inquiry (2006), commissioned by The Howard League, reported that 'pain compliance and the infliction of pain is not acceptable and may be unlawful' (p12). Indeed it was outlawed in 2008 and the Human Rights Joint Committee (2014) reiterated its commitment to ensure that pain compliance techniques continue to be abolished, specifically in relation to discussions about the Secure College proposals.

Reporting and recording the use of physical restraint across the secure estate is a complex activity. There are different reporting requirements within the different types of establishment and also differences between the various public and private sector providers. What constitutes an incident of physical restraint is also open to interpretation and confusion with terms such as: use of force, RPI (restrictive physical intervention, CIF etc.) being used to mean different things in different places.

The Ministry of Justice produce figures annually that include the reported use of restraint, number of incidents etc. (see below). I would suggest that these incidents are under reported by children themselves as well as by the institutions themselves.

Diagram 3 – A picture of children's custody

Number of child deaths in custody 1990-2011 *Prison Reform Trust, 2012,	31
Number of incidents of RPI (restrictive physical intervention)2012/13 * Ministry of Justice, January 2014	6,455 an average of 538 per month, involving an average of 366 children
Reported use of restraint 2011/12 * Murray, 2012	37% of boys 15% of girls
Reported use of restraint with Muslim and black and ethnic minority boys 2011/12 * Murray, 2012	44%
Ofsted Inspection Report for Site A Secure Training Centre 2013	59% of young people said they had been restrained

As with crime statistics (discussed above) these figures are open to interpretation and it is the qualitative data and children's actual experiences of restraint, as real acts of violence, that are important.

Whilst the official guidance and international standards suggest that use of physical restraint should only be used 'as a last resort and then for the shortest time possible' these figures suggest something entirely different. Successive enquiries and research studies have documented evidence of restraint being used too readily for the following reasons: to secure compliance with instructions; as a punishment; in situations where there is insufficient staffing; and on children who are vulnerable (Carlile, 2006; Morgan, 2004 & 2012; RAB, 2012; Smallridge & Williamson, 2008). In addition there is evidence of restraint related deaths of children in custody and of injuries to both children and staff resulting from the use of restraint. Numerous concerns have been raised (NSPCC, The Howard League, The Children's Rights Director for England, the Office of the Children's Commissioner, and The Standing Committee on Youth Justice, 11 Million, and the Joint Committee on Human Rights).

The House of Commons Justice Committee Report in March 2013 states:

> It is a matter of serious concern to us that, despite the fact that the use of force in restraining young offenders has now been definitively linked to the death of at least one young person in custody, the use of restraint rose considerable across the secure estate last year.
>
> The House of Commons Justice Committee, 2013, p 44

The Smallridge & Williamson Review (2008) was heavily criticised (not least by The Prisons Inspectorate in 2011) for concluding not just that restraint was necessary but also that pain compliant restraint in child custody is sometimes necessary.

The YJB response to the high number of child deaths in custody reports that:

> The YJB accepts that there are occasions where the safest way to protect children and staff in the secure estate is to use physical restraint.
>
> YJB, 2014, p19

The current introduction within both YOI and STC of the new MMPR procedures sanctions the use of pain compliant techniques. This will replace the use in YOI's of Control and Restraint (C&R) and in STC's of Physical Control in Care (PCC) which were developed by The Prison Service. Both methods can result in the use of pain inducing techniques. The restraint systems used in LASCH's vary and are generally supplied (as in the guidance and training) by Private Companies. Currently the use of pain compliant techniques within LASCH's is not permitted (Children Act Guidance, 1989, Volume 5) and there is resistance from the LASCH's to the introduction of MMPR for this, amongst other reasons.

Pain compliance refers to techniques, usually holds, which either inflict pain or may result in pain (RAB, 2011) and it is questionable, therefore, what place these techniques have in institutions that are responsible for children's safety and well- being.

One of the advantages put forward for the use of pain compliant techniques is that they end situations quickly and, therefore it is argued that a period of restraint is over much more quickly. This is itself a contested issue.

> However any advantage gained in ending a restraint quickly and the perceived ability to control pain must be balanced with evidence that in practice once compliance is gained, the incident is not de-escalated and staff pursue restrain until the end.
>
> Gooch, 2009, p17

MMPR was introduced in July 2012 and was rolled out initially across the YOI establishment and then across the STC estate andbecame operational in all STC's by December 2014. The Restraint Advisory Board (RAB now IRAP) set up following the Smallridge and Williamson Review (2008) has reported alongside the roll-out of MMPR. Its recommendations to the Ministry of Justice (RAB, 2011) include the introduction of a clear ethical framework; that the use of force should always be 'necessary, proportionate and in accordance with the law'; the decision to use physical force should be based on the best interests of the child; and should be set within an overall strategy for managing behaviour. Whilst the RAB also accepted the need for the use of physical force it expressed concerns about pain compliance.

> The RAB has continuing reservations regarding the restraint system's apparently significant reliance upon the use of 'pain compliance' or, more accurately, pain induction techniques.
>
> RAB, 2011, p 53
>
> Restraint should only ever be used as a last resort….the use of pain to secure compliance is unacceptable.
>
> National Preventive Measure, 2013

The implementation of C&R and PCC and other systems (PRICE, Team Teach, CALM, MAPPA, TCI) were underpinned by notions of children as either 'at risk or who pose a risk'. This has continued with the progression of MMPR. What is absent from either of these positions is the assertion that children are citizens with human rights underpinned by national and international legislation. In the absence of this perspective it is not surprising that there has historically been little debate about the way that challenging situations are managed with children in custody in a way that avoids the use of physical intervention and promotes a rights-approach. The introduction of MMPR is unlikely to offer any challenge to the status quo.

2.15 Adopting a rights-based approach

A children's rights based juvenile justice system, underpinned by the Council of Europe's Child Friendly Justice System, has been called for by CRAE (2011). The absence of a rights discourse within the Secure Estate or within MMPR is significant. The situation is exacerbated by the attention that has been diverted from the issue of the human rights of prisoners by the right to vote debacle (McNulty et al., 2014; Scott, 2013). In relation to prisoners legal rights Scott observes the impact of the ECHR.

> Whilst it could be assumed that Article 3 of the convention, prohibiting torture, inhuman and degrading treatment, would be central to prisoner rights jurisprudence, the reverse is, perhaps, more accurate.
>
> Scott, 2011, p 245

He goes on to observe:

> The law, however, has overall proved to be a fairly blunt instrument regarding the protection of prisoners' *human rights.*
>
> Scott, 2011, p 247

Garland (2001) comments on adult prisoners legal rights by observing the society-offender relationship and states that:

> Today the interests of convicted offenders, insofar as they are considered at all, are viewed as fundamentally opposed to those of the public….In consequence, and without much discussion, the interests of the offender or even his or her legal rights, are routinely disregarded.
>
> Garland, 2001, p 180

Whitty (2013) however makes a case for the assertion of prisoners human rights under the Human Rights Act , because of their potential as tools of 'resistance, empowerment and emancipation' to be considered as a potential risk to the prison establishment. This, he suggests, is not just a legal risk but what he describes as *legal risk +.* He cites examples, albeit in the adult world, of prisoners as 'rights bearing subjects who can promote moral outrage and public disquiet which catalyse into media, political and legal effects' (p 131).

A study of the use of physical restraint in a YOI (Gooch, 2009) similarly concludes that observing and upholding prisoner's rights is perceived in some way to detract from the purpose of incarceration.

> Affording greater attention to prisoner's rights and needs is believed to implicitly involve some dilution of the deterrent effects of imprisonment and the punishment of prisoners.
>
> Gooch, 2009, p 20

She also concludes:

> The reliance on physical restraint as a response to challenging behaviour is influenced by the prevailing cultures within the institutions.
>
> Gooch, 2009, p 20

There is evidence that adopting a rights- based approach can impact on behaviour, improve relationships and create more tolerant attitudes between children and adults in, for example, a school environment. The evaluation of the UNICEF Rights Respecting Schools Award (2010) reports on the improvements that were experienced in relationships and behaviour within participating schools.

> By adopting and using a rights respecting language to talk about incidents and conflicts, schools believed that situations were more meaningful to pupils and they were more likely to resolve conflicts for themselves. The RRSA creates a language that everyone understands.
>
> Sebba & Robinson, 2010, p18

Scraton and Haydon (2002) also make the case for a positive rights based approach that challenges the current construction of childhood and promotes children as active participants in the process.

It is this combination of exploring a rights-based model from the perspective of children, and which is developed and facilitated by and with children, with which this research study has been concerned.

2.16 Children's experiences of physical restraint

Research has been carried out to explore the impact of physical restraint on children, and also, in some studies, the experiences of staff. Steckley and Kendrick (2008b) report on a study carried out in Scotland of the experiences of children and residential workers of the use of physical restraint. The study aims specifically 'to give voice to those most directly affected by physical restraint' (p4), and provides an opportunity for children and staff to inform policy and practice in the use of physical restraint.

> It is important that these voices inform our response to the tension between the rights of vulnerable children to dignity and physical autonomy, on the one hand, and their right to safety, on the other.
>
> Steckley & Kendrick, 2008a, p 552

Steckley and Kendrick report that the most common feeling in relation to physical restraint described by children was anger. They set out a series of recommendations about how to both minimise its' use and also to ensure that there is common ground between staff and children to create strategies which ensure that the use of physical restraint is not necessary. In a more detailed report of this work (2008b) the authors also describe some of the complexities of children's experiences of physical restraint

including some children who reported that being physically restrained had resulted in a positive impact on their relationship with individual members of staff.

Others have reported the psychological impact on children.

> The children often described the event as painful and emotional while the adults tended to de-emotionalise the experience for children during the event.
>
> The two most common emotions expressed by children were those of fear and anger.
>
> 'I was pissed off. I wanted to hurt them like they were hurting me'.
>
> Smith & Myers Bowman, 2009, p 65

Children have been asked about the circumstances in which violence in custody takes place. A piece of research, carried out by child researchers to investigate children's experiences of violence in custody across five countries in the European Union (CRAE, 2013) suggests that children believe:

- Staff often contribute to the violence,
- Sometimes staff use violence to assert their position,
- Sometimes staff intervene too quickly and
- Sometimes staff provoke incidents in which they are then justified in using violence.

And, although there was evidence children often felt the staff had to intervene to prevent further violence, sometimes in doing so they used excessive force.

Reports from the Office of the Children's Rights Director (Morgan, 2004; Morgan, 2012) suggest that children themselves are often accepting of the need for physical restraint,

particularly in situations when they are unsafe. However they also suggested that staff should a) know how to restrain properly and b) that situations often escalate and build up and that staff should know how to intervene sooner. However the questions that the children who were involved were asked assumed the need to use restraint as a given. Children were asked: when is it right to use physical restraint; should it be used straight away or as a last resort; should restraint ever hurt etc. Children were not asked about alternatives and the research was based on the assumption of a restraint policy being necessary. The final words of the latest report (2012) sum up the approach 'only do it carefully'.

The notion that physical restraint should only be used as a last resort, that it should signify a failure in other attempts to de-escalate the situation and that it should be a rare occurrence is not born out in the data. Whilst it is the qualitative data that is relevant to my research it is also important to place this within the broader context, Accepting that statistics do not tell us everything the significant fact is that the use of physical restraint is frequent across the secure estate and that although there are fewer children in custody the use of restraint has not decreased.

There were 6,455 incidents of restrictive physical interventions (RPIs) used in the secure estate in 2012/13 down 7% from 2009/10 and down 23% from 2011/12. However there have, at the same time, been significant reductions in the numbers of children in custody. When the same figures are represented as the number of RPI's per 100 children they increased by 45% from 2009/10 and an increase from 17.6 RPI's per 100 children to 25.6 per 100 children in 2012/13. There was an average of 538 incidents per month on an average of 366 children and these were higher for the younger age group (10-14) and for females (YJB, 2014).

The Howard League (2013), reports that there are 23 incidents of physical restraint per day across the secure estate. This suggests something very different to the use of physical restraint in exceptional circumstances and only as a last resort.

The fact that the numbers of children in custody have fallen dramatically has resulted in a rhetoric that suggests that those who are now incarcerated are' the most difficult, the most challenging' children.

> As the numbers in custody fall, further reductions become more difficult, in particular as the children and young people in custody are now a more challenging cohort. The YJB continues to work with its partners across the sector to address the needs of this cohort with the aim of delivering further reductions to the numbers in custody.
>
> Dawes, Director of Operations YJB, reported in Children & Young People Now, 15th May, 2014

Gyateng et al. (2013) reported that 57% of children (59% in YOIs, 56% in STCs and 50% in LASCHs) did not change their behaviour in the light of the fact that they might be restrained. The use of restraint continues to be significant with 39% in YOI, 44% in STC and 53% in LASCHs having been restrained (Gyateng, 2013, p 35).

One of the issues that children raise is the difference between welfare (section 25's) and those placed through criminal proceedings in a SCH. Within the Secure Estate children can be placed in Secure Accommodation through the Family Courts under the Children Act 1989, for their own safety. They are placed in SCH along with children who are either remanded or sentenced through the Criminal Courts as a result of criminal actions. Although these children have a different legal status whilst in custody they are

subject to an identical regime whilst incarcerated. This is only the case in England and Wales as, elsewhere in the UK, there are separate secure facilities for children incarcerated on welfare grounds and those incarcerated through the criminal courts. This raises issues for children in custody, as reported by Morgan (2009).

> Generally young people thought that in future there should be separate units for these two different sorts of placement, because their needs were different. 'should be two different units for the welfare and the criminals'; 'welfare are more need, it shouldn't be mixed because they are here for different reasons'; 'if you are here on welfare you haven't done anything bad'.
>
> Morgan, 2009, p11

The issue of the different routes into secure accommodation is also acknowledged to be a gendered issue (O'Neill, 2001) with more than 75% of girls in LASCHs admitted through the welfare route whilst 75% of boys are admitted through the criminal justice route.

2.17 Deaths in custody

One of the reasons that the use of physical restraint in custody is so controversial is the high number of child deaths that have occurred in the secure estate. The fact that 33 deaths have occurred (YJB, 2014), and the research around the circumstances of such incidents (Goldson & Coles, 2005; The Prison Reform Trust, 2012), suggest that the issue of physical restraint can be closely linked to each. A number of campaigning and rights based organisations have ensured that several high profile cases (referred to above) have remained in the public eye and on the political agenda. INQUEST, an organisation set up to campaign on the issue of deaths in penal custody, has reported on

the issue of self- inflicted and restraint related deaths of children in custody (Prison Reform Trust, 2012).

An earlier publication from INQUEST, Goldson and Coles (2005), provided the first detailed analysis of children's deaths in custody and discussed the official discourse that follows with what they describe as 'individual pathology' about children's inability to cope, weakness or inadequacy that is seen to have contributed to their deaths. This 'failure to cope' has also been discussed elsewhere (Medlicott, 2001).

> Ultimately, this is a distorted rationale that allows the state and its agencies to minimise – if not deny – responsibility and accountability, whilst effectively 'blaming' child prisoners for their own death and/or damage. It is dishonest and ethically reprehensible.
>
> Goldson & Coles, 2005, p 97

A review of the medical theories and research relating to restraint related deaths (Aitken, 2011) questions the safety of restraint techniques in terms of both body positions and duration.

The authors identify children as a high risk category in relation to restraint related deaths and make recommendations about training, risk assessment, management, reporting and about the involvement of service users and their families in discussions prior to any incidents.

In the wake of the controversy surrounding the deaths of Adam Rickwood and Gareth Myatt the Government appointed an Independent Advisory Panel on Deaths in Custody (IAP) which is continuing to investigate deaths within and in the transport between custodial institutions, including SCH, STC and YOI.

Stone (2012) in his legal commentary on 'the sorry tale of forcible physical restraint of children in custody' concludes that:

> The sorry tale may yet have more chapters.
>
> Stone, 2012, p 26

A recent report from the British Medical Association (BMA, 2014) considers the health implications resulting from the use of physical restraint and concludes:

> In the light of the evidence of the increased use of restraint, and the potentially serious consequences of its use, the BMA calls for a fundamental culture shift in the use of force and restraint in the children's secure estate, and calls for the Youth Justice Board and individual institutions to take steps to address this.
>
> BMA, 2014, p 49

2.18 Summary

So where is all this taking us? My argument is that we cannot congratulate ourselves for upholding children's participation rights, even for those children involved in the criminal justice system, whilst at the same time turning a blind eye to 'state sanctioned violence towards children' (Goldson, 2009). The social construction of the child offender - the 'villain' the 'dangerous' the 'threat', allows a response which denies their status as citizen or rights holder. Adults rights entitlements and citizenship status is eroded when they become prisoners. Children are already non-citizens (James & James, 2004, p37) and acknowledgement of their status as rights-bearers is at the very least fragile. Once incarcerated children's legal and moral rights entitlements all but disappear. Whilst there is already a lack of evidence of tangible outcomes from the existence and implementation of the human rights of children (other than a focus on those that are

easily side-stepped such as Article 12, UNCRC, participation rights), it is easy to see how the right to, for example, freedom from torture (Article 3, EHRC) can be dismissed.

It can be argued that the way child offenders in the secure estate are perceived by the public, policy makers and practitioners result in their human rights with regard to respect, safety and voice being regularly violated. The routine use of physical restraint in circumstances in which there are viable alternatives is one such violation.

Chapter 3 explores the theoretical frameworks within which the study was carried out and sets out the rationale for the methodology and methods that I used. It will explain how my ontological and epistemological approach has informed the research process. It will also draw attention to the lenses through which the evidence was viewed.

Clearly there are many unanswered questions raised here. If the use of physical restraint is in fact linked with society's lack of regard for the human rights of children and for its need to punish children who break the law then, can it be morally right - however it is justified.

Chapter 3

So what is 'real'?

3. Introduction

This research, a piece of participatory research, also explores rights based research methodologies, creating spaces in which the child's voice could be expressed as well as investigating the continued use of physical restraint. The theoretical perspectives which underpin the choice of methodologies include a constructivist approach which acknowledges that concepts such as childhood, child offender, citizen etc. are socially constructed and that they alter in time, space and location. It also includes a critical realist approach which recognises the existence of multiple realities. It is how these constructed realities appear through the eyes of the child that the research explored.

It also has its roots in participatory action research (PAR) by situating children's experiences and perceptions at the centre of the research project.

> PAR takes lived experience as the starting point for investigation, places emphasis on the research process, and reconsiders the value of research as a vehicle for social change.
>
> Cahill, 2004, p 275

Having established what the research would explore it is also important to set out how this would be done and why specific ways of carrying out the research were chosen.

There is no such thing, in my opinion, as universal knowledge or universal truth. Knowledge is created and constructed and alters in time, place and space. The creation of knowledge as suggested by Rose (2004) results from different standpoints some are based on science and some on experience. In order to challenge the dominant discourse or perceived wisdom at any given time and place it is essential to develop and take account of these different standpoints and to acknowledge the limitations and possibilities that each standpoint brings. An important part of research and of the researcher is about knowing where you stand. This includes knowing and understanding the researchers' ontological perspective, epistemological position and how these influence the choice of methodology and, therefore methods to be used. So, to be clear, I adopted a constructivist, critical realist approach to underpin the research methodology which I will endeavour to explain in the following section.

It is also important to be clear about the relationship between the researcher and the researched, and about the intent of the research. Research is often a publicly accountable activity and research for research sake is, in my opinion, a luxury that cannot be justified in the current economic climate. It is my view that research should be transformative that it should have some purpose and applicability beyond being of interest to the academic world. Research has an ethical accountability to research participants that should be a guiding principle throughout. It was intended that this study should be meaningful and useful to policy makers and practitioners and, also that both the process and the outcomes should have meaning to children. It is hoped that the findings will contribute to the current debate about how best to support and care for children in custody from the perspective of children themselves, by making the findings available to the individual institutions that took part in the research as well as the wider research and policy community.

An ontological perspective includes the social reality of the research i.e. what is the nature of the phenomena, entities or social reality that is being investigated? The epistemological position includes what might represent knowledge or evidence of the social reality or entities that are being investigated? And these will then influence the researchers' choice of methodology and methods involved in the issues being investigated (Mason, 2002).

This study comes from a constructivist, poststructuralist epistemology that is also informed by a feminist and rights based perspective and conducted within a PAR approach. This chapter aims to describe the approach that has been adopted and to discuss the: what, why and how (Blaikie, 2000) of the research paradigm. My own view of children and childhood that constructs them as rights bearing citizens and as experts (see also Cammarota & Fine, 2008) has influenced the methodology and methods that were utilised.

3.1 The influence of a feminist perspective

The core of this feminist perspective is that historically all science has been informed by an androcentric, a masculine way of viewing the world which takes insufficient account of women's experiences and is distorted by this narrow view of the world. Similarly research about children has, historically, been conducted by adults from an adult perspective taking insufficient account of children's experiences or abilities. I explore some of these here and will return to them at various points throughout the following chapters.

Feminist research emphasises a non-exploitative relationship between the researcher and the researched which is based on collaboration, co-operation and mutual respect (Everitt et al., 1992). This study promotes a similar process between the researcher and

the children who are participants (in a variety of ways) within the research process. Feminist standpoint theory (Harding, 1991) rejects the notion that knowledge is a straightforward outcome of some essential characteristics of group members but instead emphasises social ideologies (sexism and the gender roles that this creates) that explains why girls and women are assigned to certain activities and why those activities are less valued than activities typically assigned to boys and men. The conditions and experiences common to girls and women are not natural, but are the result of social and political forces. This analysis can be similarly applied to children and their current position as less valued, less competent and so on (as described in the previous chapter) and the position of girls within the youth justice system is a moot point.

Some feminists see a concern with achieving objectivity and overcoming subjectivity in science as being part of the dualistic way in which men view the world (See Hartstock, Smith, Stanley & Wise etc.). Women's position in society is not a natural phenomenon but a social, economic and political product which is reflected and perpetuated by the androcentric bias of science. Feminists argue that dynamic objectivity (the pursuit of knowledge that makes use of subjective experience, [Keller, 1985]) can be achieved through the use of subjective processes by which other people, and other communities, can be understood (Harding, 1993, in Alcoff & Potter, Eds.). This knowledge is gained from shared feelings and experiences, the use of subjectivity increases objectivity and decreases the false claims of objectivism.

> Strong objectivity requires that the subject of knowledge be placed on the same critical, causal plane as the objects of knowledge.
>
> Harding, 1993, p 69

Standpoint feminist theory is, therefore, inherently political in identifying and challenging established social hierarchies and their consequences. It can be argued that adopting a participative approach with children is an inherently political process which also aims to challenge established research practice by promoting an alternative research paradigm which challenges issues of power and inequality by placing the researchers (in this case children) at the centre of all aspects of the research process. This direct involvement creates a similarly dynamic objectivity that ensures that the research evidence is both shaped and informed by people with experience i.e. children.

3.2 The influence of a rights perspective

The sociology of childhood discussed in Chapter 2 places children as the subjects of research rather than objects and suggests that they have both agency and capacity. This has informed a relatively new approach to social research which utilises a child centred participatory research methodology (see Christensen & James, 2000, for discussion). Children are acknowledged as experts in their own lives and recognised as having something of value to contribute. An additional dimension which has been recognised (Lundy & McEvoy, 2011) is that not only do children have the ability to engage in the research process but that they have a right to do so.

> ..when children are viewed as *rights-holders* they are not just recognised as *able* but also *entitled* to be engaged in this process, with a concomitant duty on the adults working with them to ensure that their right to express their views and influence their own lives is respected.
>
> Lundy & McEvoy, 2011, p1

A rights-based argument for children's involvement in research based on the requirements set out within the UNCRC has emerged along with a number of other issues which provide a rationale for child-led research. Beazley et al. (2011) argue that rights-based research ensures that both the process of research and the results are ethical, scientifically robust and respectful of children. They set out the specific articles from the UN Convention that underpin children's rights within the research process and conclude that…

> Possibly most important of all for children and their futures, rights- based research provides a scientific basis for policy and action, which genuinely recognises children's experiences and priorities.
>
> Beazley et al., 2011, p174

This rights- based approach provides one of the cornerstones for this study.

3.3 Ontological considerations

It is important to be clear from the outset about my ontological position and how this has been used to inform the manner in which the research was conducted, the chosen methodology, values and principles. The study of being, with the nature of existence and with the structure of reality (Crotty, 1998) is fundamental to the shape and design of the research and to its intent.

Social constructionism acknowledges the significance of humans making sense of their world within a historical and social perspective and whilst individuals make sense of their own world we are also all born into a world of meaning, we inherit a system of intelligibility (Crotty, 1998) or a system of significant symbols. This suggests that for every human being they are interpreting the world through lenses that are bestowed

upon us by culture. Social constructionism is, therefore, the social construction of reality. Ontological properties include people, social actors, social processes, discourses, rules, morality, belief systems, multiple realities etc. It will be argued that the concepts of child and childhood, as well as that of offender are socially constructed and therefore open to interpretation and that people's discourses, rules, and belief systems impact on the way that they perceive children and specifically children within the secure estate.

An understanding of the constructivist and constructionist paradigm, and the variations within, has also informed the study. Constructivism is a 'paradigm' that is based on the belief that social meaning/normative meaning/whatever meaning/ is constructed…..that is built by the participants in a process, rather than as some sort of objective truth out there waiting to be found (positivism). The difference lies in the idea that the constructivist paradigm views reality as constructed by the individual whilst the constructionist paradigm views reality as being constructed through interaction, through language. In constructionism, the idea of cognitive processes etc. is itself, a 'reality' constructed through interaction. Both suggest the world is 'constructed' (rather than existing 'objectively' which is positivism), but that 'constructivism' assumes some 'bottom-line' realities i.e. that there exist cognitive processes and a conceptual framework which enables the individual to construct the world (hence its prevalence in psychology, which makes more objective/scientific claims than sociology). In contrast, 'constructionism' makes no such bottom-line claims, and indeed would suggest that the notion of 'cognitive processes' itself is a social construct.

> Constructionism is the view that all knowledge, and therefore all meaningful reality as such, is contingent upon human practices, being constructed in and out

> of interaction between human beings and their world, and developed and transmitted within an essentially social context.
>
> Crotty, 1998, p42
>
> A constructivist ontology entails the assumption that social reality is produced and reproduced by social actors, it is a pre-interpreted, intersubjective world of cultural objects, meanings and social institutions. A consequence of this position is that in any social situation there may be multiple realities.
>
> Blaikie, 1993, p203

This study builds on a constructivist ontology in that it is based on a view that there are multiple material realities of the same subject at play including: those of the researcher, the children who are part of the Children's Advisory Group (CAG), staff, children in custody, policy makers and academics. A reality is co-constructed by combining the contributions from each party. It also recognises that there are numerous voices involved in any situation and that there are a number of key players who are each experts in their own right. The research aims to draw out the expertise of children within this specific setting as a way of redressing the current imbalance between the perspective of adults and that of children.

3.4 Epistemological considerations

The epistemological position requires a statement about how knowledge can be demonstrated i.e. what evidence counts. The 'intellectual puzzle' (Mason, 2002) that this research is grappling with involves understanding issues around the use of physical restraint with children in custody, from the perspective of children themselves but is

also explicitly being investigated as a participatory research project that intends to be both emancipatory and transformative.

> In general, the more socially unacceptable the knowledge, the greater the burden of proof that will be required of the messenger.
>
> Everitt et al., 1992, p 17

Punch (2002) discusses whether there is a need for child-friendly research or whether, if children are constructed as competent social actors, research with children is any different to research with adults. My argument is that in order to co-construct a research framework the contribution of a number of perspectives is of value. This includes adult researchers and also, importantly, child researchers whose contribution is important qua the child.

It is important also to acknowledge the existence of agency and power and to recognise the impact of structural power inequalities between children and adults. Whilst every effort was made to ensure that members of the CAG were treated as equal participants in the research process, and each was acknowledged to be active agents, the presence of power imbalances must be acknowledged. For those children who contributed as research participants, particularly those in custody, this was especially significant.

The influence of the PAR tradition is also important to acknowledge as children's constructed realities and perspectives as researchers and the researched were central to this study.

3.5 Constructivism

The nature of the child is subjective, not objectively knowable or measurable. The child has her own perspective but is also socially determined and theories are inextricable from context and culture.

A qualitative research framework is based on assumptions about the subjective nature of children, knowledge and research methods. The qualitative approach is based on the scientific activity of induction i.e. the process of generating new theories in which theory emerges from the data. At the level of interpreting the research, there is the qualitative aim of discovering or entering the subjective experience and perspective of the child.

There have been epistemological debates about the nature of feminist enquiry and the validity of its knowledge. Such knowledge, claim feminists, is bound to be more accurate than knowledge which omits women. Representation of the views of girls and women in the criminal justice system, and recognition of their experiences, has illuminated the very different view of criminality and different treatments/punishments accorded to men and women (Shore, 2002).

Fundamental to the claims for validity of feminist knowledge is the recognition of patriarchy and its exposure of the gender bias of knowledge that emanates from theoretical approaches and research formulated and undertaken within the constructs of patriarchal societies. Articulating and analysing the experiences of the less powerful in society reveals a more complete knowledge.

This can also be true of the position of children and the sociology of children and childhood has started to explore structural issues in relation to children. This has a

significant bearing on research with children. The development of YPAR (youth participatory action research) promotes the idea that children 'have the capacity and agency to analyse their social context, to engage critical research collectively and to challenge and resist the forces impeding their possibilities for liberation' (Cammarota & Fine, 2008, p5).

Clarity is not the same as certainty. Certainty in theory leads to dogma and blinkered practices. Clarity in theory opens it up for scrutiny, not only by you but also by others. Contrary to popular belief, research does not provide answers, but it ensures that questions are asked. Research, like practice should not be a technical process: it is an intellectual, critical and creative one. This study aims to open up the debate about children's experiences in the secure estate from the perspective of children. It answered some questions, generated answers that were not anticipated and created a much longer list of questions. It also created opportunities for reflexivity.

> Reflexivity should be a central part of the research process with children where researchers critically reflect not only on their role and their assumptions, but also on the choice of methods and their application.
>
> Punch, 2002, p 4

3.6 Feminism

In addition to the researcher being able to place herself in the shoes of the researched a feminist method for social sciences demands that research must be based on women's experiences as a source of research problems, hypotheses and evidence. Feminist research should be designed by women to deal with what *they* regard as problematic from their experiences, and it is argued that the cultural background of the researcher is

part of the evidence requiring that the researcher must place herself in the same critical plane as the subject matter. These characteristics avoid the 'objectivist' stance in which the researcher attempts to be an invisible, autonomous expert. Smith (1974) argues that it is not possible to have objective knowledge which is independent of the social location of the researcher. The socially constructed world must be known from within, it is never possible to stand outside it and other people have other experiences and may live in different social worlds. She proposes that social research should begin with everyday experiences. The work of Fine (2014) has also been influential and she asserts that the technique she uses predominantly, participatory action research, is not a separate methodology but is an epistemology the challenge of which is to locate knowledge amongst oppressed and excluded individuals and communities in a way that promotes and recognises their expertise.

This brings us to the investigation of issues that affect children, how and why these might be studied from a constructivist, feminist and rights-based perspective.

Grieg and Taylor (1999) suggest that historically the main themes for research with children have been:

- Learning
- Adolescent deviance, delinquency and morality
- Children's relationships
- Child health and illness

  Grieg and Taylor, 1999, p 10-14

Whilst research with children has made progress it has also been limited by the way that the world has been constructed by adult researchers, and professionals/practitioners. Adults have made choices about the what, why and how of

research with children and have done this from an 'adultist' perspective. My study challenges this notion by placing children themselves at the heart of the research process. This ensures that the research starts with the everyday experiences of children, as children, and builds on the additional experience of children in custody.

3.7 Methodological issues

3.8 Researching social life

A statement of values and principles for research that is empowering is proposed. These principles recognise that all people have skills, understanding abilities and rights. Stanley and Wise (1983) argue for 'more humane, less 'scientific' and patronising approach than one which uses people's lives as merely research fodder'. They assert that one of the outcomes from research should be social change that results from an emancipatory process. Assumed expertise can no longer be used to legitimate control over data and their analysis. Nor can it relegate hers to a subordinate, unequal or less knowledgeable position (Oakley, 1981).

Participatory forms of research go further by valuing not just the subjective experiences of those whose circumstances and behaviours are to be understood but their active contribution, acknowledging them as the true experts of the direct experience involved.

Social research, as opposed to 'scientific' research is the investigation of social life. Silverman (1997) questions the role of social research and concludes that addressing social problems is a legitimate objective for social research (although he does acknowledge some of the limitations). Furthermore he looks at questions about values and neutrality within the research process and at whether, in fact, research can/should be explicitly political. He concludes that addressing social problems is a legitimate

objective for social research and discusses the role of qualitative research in this process. Gilbert (1993) suggests that there are three major ingredients for research: the construction of social theory, the collection of data and the design and methods for collecting data.

He suggests that the design of methods should be in order to accurately report on the social world. Furthermore he suggests that research takes place within what he describes as the 'research community' which itself provides a body of theory in which the research is located.

The subject of the remainder of this chapter, therefore, is to look at the methodology and methods required to carry out research with children specifically the use of qualitative research, including participatory research methods.

3.9 Research methods and methodology

Methods, the 'actual techniques or procedures used to gather and analyse data related to some research questions or hypotheses' as distinct from methodology which is 'the analysis of how research should or does proceed' (Blaikie, 1993). Which methods are selected and what methodological issues are addressed will depend in turn on the purpose of the 'enquiry' that is being undertaken. Is it exploration, description, understanding, explanation, evaluation or change? The approaches that are adopted will also entail a view of the relationship between the various participants i.e. the 'researcher and the researched'. As Silverman (2011) suggests the primary aim of research is the production of knowledge which can be used legitimately as an agent of social change.

Critical Theory, as opposed to 'enlightenment' or engineering' models (Finch, 1986; Janowitz, 1972 in: Silverman, 1997) for example 'sees the researcher and the researched engaged in dialogic communications, with a view to helping people to transform their situations'. Feminist research has promoted the idea that social scientists should not be detached and objective 'observers' but should use their thoughts, feelings and intuitions with an eye on change.

> Within the field of social research generally, there has been a gradual shift over the last two decades towards the recognition of research as a social process in which researchers can do more or less to redress the balance of power between them and those they interview. The debate about developing more democratic research methods has been enhanced by the contribution of feminist researchers.
>
> Ward, 1997, p7

If, on the same basis that feminist critiques question our notions of roles, relations and forces within society built on unexamined assumptions about women that are then reproduced in theories about society and social life, the same can be said to be true about research which investigates children and has been based on assumptions from one view, an adult view of the world. These assumptions are now under scrutiny (Corsaro, 2004; James & Prout, 1997; Jenks, 2005).

The notion that value free research (if such a thing exists) has to be replaced by 'conscious partiality' which is achieved through partial identification with the 'objects' of research. Participation in social actions or struggles is a legitimate objective for social research and the research process must become a process of 'conscientisation' for both 'research subjects' and 'research objects'. There are ethical, political and

methodological issues at play which need to be addressed. However, ultimately if the aim of research is to 'understand and change' as opposed to 'explain and evaluate' (Blaikie, 1993) then adopting a participatory research methodology is one way to achieve this. Participatory research it can be argued is both a separate method and also a methodological philosophy based on the principle that researchers should give greater control to the research participants as part of the process of empowerment. Participatory research involving children is an emerging area of practice but not without its own variations, challenges and disagreements, some of which are described below. Uprichard (2010) for example, suggests that it is a question of methodology:

> Children's involvement in social research is a methodological challenge rather than an ontological one about children in the world.
>
> Uprichard, 2010, p 4

Punch (2002) promotes the idea of using a range of different methods and techniques based on the individual abilities and circumstances of the children involved.

> If children are competent social actors, why are special 'child-friendly' methods needed to communicate with them?
>
> Punch, 2002, p1

She suggests it is, in fact, the way that the researcher perceives children and childhood that influences the choice of methods and that if they are considered to be equal to or the same as adults then the same methods should apply. This, however, does not take account of the issues of power and inequality. I am more persuaded by the position of for example, Alanen (1998, 2000), who asserts that in addition to issues around competence the structural position of the child in society has a bearing in how she is

perceived and conceptualised. In my view it is this structural position that makes children's research distinctive.

Punch (2002) identifies the issue of 'spaces' and suggests that adult spaces dominate society and that it is, therefore, difficult to find child spaces in which to conduct research. The creation of New Space, see below, was an attempt to address this issue.

Abebe (2009) discusses the importance of developing socio-ethical research spaces with disadvantaged children and Cornwall (2002) explores what she describes as spaces and places for public participation. It is beyond the scope of this thesis to explore the issue in detail. What is significant however are the opportunities that the New Space created to negotiate the research activities we carried out and the role that the child's voice played within this space. The importance of the research spaces created for this study will be reflected on in Chapter 6.

3.10 Participatory research

Along with the growth of participatory approaches to the provision of services for children and the increased profile of children's rights there has been a growing recognition of the rights for children's involvement in research and a 'research community' which promotes participatory research as a methodology (Kirby, 1999; Kellett, 2004; and others). Petrie, Fiorelli and O'Donnell, (2006) promote methodological practices that reflect current legislation and convention in line with 'best practice' in terms of children's rights and participation. Such research practices are promoted as different and valid approaches rather than as being somehow inherently better.

This has been alongside the expansion in models of user led participatory research methodologies with adult service users (Beresford, 2003; Faulkner, 2004; Kindon, Pain and Kesby, 2007; Rose, 2004).

> In pure participatory research, the question comes from the participatory community and the object is to bring about social change.
>
> Rose, 2004, p 25

Rose (2004) acknowledges the central issue of power in her paper which discusses user involvement in mental health research. Beresford (2003) similarly discusses issues around power and knowledge and argues that the closer the knowledge obtained through research is to those with experience the more reliable and accurate it is. These arguments place an onus on the researcher, therefore, to not only utilise methodologies that promote the rights of research participants but also that acknowledge issues around power and equality and engage in research practice that contribute to re-balancing this differential.

Moore (2004) asserts that both feminist and participatory action research is about empowerment, challenging the status quo and about pursuing social change. She advocates that true participatory research challenges traditional hierarchies and addresses the power differential and that;

> True participation in research activities is distinguished as a process whereby people are involved in setting the agenda of the inquiry, formulating the questions for the inquiry, developing the methods and collecting and analysing

> the data…..In a model of true participation, participants have more control over the outcomes and process of the research.
>
> Moore, 2004, p 156

Kellett (2004) discusses the issue of age as a barrier to children's participation in research and advocates that children need the skills of a researcher not the skills of an adult. Uprichard (2011) further promotes the idea that children can/should be involved in researching areas of social life that are not traditionally associated with children and childhood but that they can and should be could be involved in all areas of social research.

Hill (2006) stresses the importance of using a variety of methods when conducting research with children and Christensen (2004) suggests that:

> '….the importance of researchers seeing children primarily as fellow human beings……..This approach does not assume that particular methods are needed for research with children because they are children, that a different set of ethical standards is required or that the problems faced during the research process are unique to working with children.
>
> Christensen, 2004, p 165

She advocates developing 'cultures of communication' in which the fieldwork element of the research process involves engaging in a process of dialogue through which a greater understanding is developed between children and adults.

In the field of community and international development there have been some excellent participatory research projects (described below) which have placed children

at the heart of the research process and have taken the next step which is to support child-led research processes.

Some argue that participatory research is not so much a separate method but a methodological philosophy based on the principle that researchers should give greater control to the research participants as part of the process of empowerment (Moore, 2004; Lolichen, 2006), as suggested above. Participatory research involving children is an emerging area of practice and one which I argue is explicitly part of an emancipatory process (Cairns in Tisdall et al., 2009) i.e. which results in social change by respecting the human rights of children and valuing an alternative perspective. In this case it is hoped that improvements can be demonstrated in the way that children are cared for within the secure estate.

One of the arguments put forward for using participatory research methods based on a human rights framework is that this is a 'good' thing, i.e. that it empowers children or even that it may be part of an emancipatory process. There is also consensus amongst some academics, researchers and practitioners that participatory research and child-led research can access a richer source of data which means that the research is more effective and empathetic, i.e. that it is somehow closer to the 'truth' than adult led research which pursues an adult agenda from a narrow perspective.

> Children observe with different eyes, ask different questions, have different concerns and have immediate access to peer culture where adults are outsiders.
>
> Kellett, 2006, p 11

The role of the Children's Advisory Group (CAG) discussed in Chapter 4 addresses this issue in more detail.

3.11 Child-led research

Doing research *about* children has evolved over time into, doing research *with* children, and, more recently into children doing research….. so called '*child- led*' research. There is an acknowledged difference between children as *objects* of research and children as the *subjects* of research (Kellett 2004; Kirby, 2004; Sharpe, 2009; Tisdall, Davis and Gallagher 2009). This is partly as a result of national and international legislation that has reflected the right for children to express their views and to be involved in decision making, but also from the academic field that is beginning to recognise that this research produces credible results. Child-led research (as opposed to child-friendly) is emerging in schools (Burton et al. 2010), within health (Davy et al. 2003), within local authorities and has existed for some considerable time in developing countries (Hart et al. 2004; Khan 1997; Porter & Abane 2008).

In a report about street children's involvement in a piece of research on public transport in Ghana, South Africa and India (Lolichen, 2006) concludes that adults should avoid imposing research themes or research methodologies on children.

> Children have a right to know their situation and respond to them appropriately. They are able to understand and present their problems much better than anybody else. They are capable of arriving at solutions most suited to their own research and using the information to better their situation is their right.
>
> Lolichen, 2006, p 032

Panter-Brick (2002) reports on research, again with street children, addressing public health issues in a variety of developing countries and puts forward the concept of children as agents of social change and demands that children have agency and social

competency and, therefore, the ability to shape their lives for themselves. Panter-Brick goes on to question whether the rights discourse should be tempered with a measured consideration of children's competencies. Making reference to Freeman's work this, she concludes, is problematic:

> To make rights contingent upon capacity is, however, problematic – especially where children are concerned, when adults remain the all-powerful adjudicators of their competencies.
>
> Panter-Brick, 2002, p 155

Ensuring that research addresses children's agenda rather than pursuing an entirely adult-led agenda, it is argued, will produce a more reliable and meaningful outcome. Research is, therefore, better informed throughout the process (Kellett, 2004; Kirby, 1999; Tisdall et al., 2009) lending support to the argument that child-led research will provide richer sources of data that have a greater potential for social change that is meaningful to the children who have been involved. Kirby (1999) acknowledges the central issue of power in her paper which discusses user involvement in mental health research.

> When researching young people, using young researchers helps reduce the power imbalance between the researcher and the respondent. …young people may better understand each other's language and the young respondents may feel less intimidated by young researchers. Involving young researchers also helps to ensure the issues most relevant to young people are identified and addressed by the research.
>
> Kirby, 1999, p 18

Much of the research about children's issues, is or has been adult generated and is conducted, analyzed and reported by adults to adults (Qvortop in Christensen & James, 2000). There is increasing evidence to support a methodology which ensures that children become the researchers as well as the 'researched'.

> Children are the primary source of knowledge about their own views and experiences.
>
> Christensen & James, 2000, p 253

Caution, however, is needed to ensure that children's involvement is not tokenistic, demeaning or exploitative and that adults avoid what Kirby (above) describes as *using* child researchers and that it promotes and respects the expertise of children in their own right.

O'Kane (2000) addresses issues around the power imbalance between children and adults and the historical and cultural context that exists in which children's voices have remained unheard. She advocates creating spaces in which children can be supported to speak up and be heard. Thomas and O'Kane's work (1999) put the child's voice at the centre of their research at a time when few others were using such techniques and paved the way for different approaches to uncovering the child's voice in research. Todd (2012) promotes the idea that research should reflect the multiple voices rather than what she suggests might simply be…. a single plane of research.

3.12 Multiple methods

Numerous researchers have concluded that participatory research methodologies produce the best outcomes when they use a variety of methods (Cairns, in Tisdall et al. 2009; Christensen, 2004; Hill, 2006; Lolichen, 2006). This includes: drawing, diaries, ,

video, photography, mapping, observation, focus groups (including the jumping focus group) the Walkman technique, activity days, Agenda Days, diagramming etc. Caution is needed however and Darbyshire, MacDougal and Schiller, (2005) ask a pertinent question about using multiple methods in qualitative research with children: does this produce more insight or just more?

> The question remains, however, as to whether these varied approaches to enabling children to describe their worlds create clearer insights and understandings or are they merely more grist to the methodological mill. Methodologically, is more better, or is it simply more?
>
> Darbyshire et al., 2005, p 424

There are suggestions that different methods are applied to different age groups (Scott in Christensen and James, 2000; Kellett, 2004) or to specific groups of children including disabled children (Badham, 2004; Lewis and Kellett in Fraser, Lewis, Ding, Kellett and Robinson, 2004) or children looked after (O'Kane in Christensen & James, 2000).

In addition to considering using different methods to generate data from different perspectives there is the important issue of triangulation (Fraser et al., 2004; Gilbert, 1993) which has been promoted as a way of ensuring that research findings are collected from a numbers of sources, using different methods or from a variety of researchers or theoretical perspectives thereby increasing the validity of the research. Triangulation is the use of a combination of or multiple methods to explore one set of questions. This enhances validity by shedding light on an issue from a range of different perspectives or dimensions. Whilst there are different perspectives on the concept of triangulation (first put forward by Denzin, 1970) if it is taken in its broadest sense to

mean 'looking at an object from more than one standpoint', then the use of this concept within the field of participatory child-led research may prove useful. It suggests that numerous perspectives are both possible and useful and that research may be valid and reliable if these numerous perspectives can be gathered. In this study evidence is presented from the perspective of children in custody, from the child researchers, my own observations and analysis and a brief overview from other adults.

3.13 What does this mean for the research proposed?

Whilst there is clearly a research community developing a discourse and practice around participatory approaches and methods of research *with* and *by* children and there is also a danger that, as this is inevitably driven by adults, it simply replicates adult methods and models of research. There are numerous toolkits/guidance documents (Funky Dragon, 2011; Kirby, 2004; Office for Public Management, 2010 Participation Works, 2009) that promote the concept of children as researchers. However by advocating research processes, methods etc. that have been developed by adults they may miss the very essence of participatory child-led research. There are emerging examples of the outcomes of such research (Burton, Smith & Woods, 2010; Kellett, 2004; Sharpe, 2009; Warren, 2010) which strongly suggest that children are being trained and guided to carry out research which mirrors that carried out *on* and *with* children in a similar way to that carried out by adults. There is a danger that this simply replaces adult researchers with younger models who have had trained out of them their unique insight and does not value the other contributions and improvements that children can bring to research.

Whilst questions are being raised (Darbyshsire et al., 2005; Hill, 2006; Punch, 2002; Uprichard, 2010) there is little to date to suggest that there is sufficient room to

encourage new and different approaches, designed and carried out *by* children *with* children. And caution is warranted, according to O'Kane (in Christensen & James, 2000) about participatory techniques and their limitations which, she suggests, may be more responsive to the participants than to the researchers agenda and may, therefore, restrict the ability to collect information in a uniform way that is considered to be sufficiently rigorous.

Innovative research has yet to result in the emancipation of children in the way that feminist research contributed to the emancipation of women. Adult researchers, practitioners and policy makers may have to suspend judgement about what constitutes 'good' research, valid or reliable outcomes and create space and spaces which ensure that children can generate their own research questions, processes, methodologies and methods in addition to their involvement in research in partnership with adults. The creation of space and spaces will be discussed in Chapter 6.

Fleming and Boeck (2012) provide numerous examples of creative and innovative research including participatory and peer led research which demonstrates the benefits and added value of collaborative research with adults and children working in partnership. They describe how the critical creative capabilities of children enhance the research process and can bring a unique insight to health and social care research.

The overall theme of the research was clearly not generated by children as the research is part of a PhD programme. However within these parameters there was scope for the CAG to shape and conduct parts of the research process. Children were involved as advisors and researchers themselves and helped to carry out, analyse and present the data. This will be discussed in detail in Chapter 4.

As the research was intended to be emancipatory research (Beresford, 2003; Hanley, 2005) this has been acknowledged from the outset with an explanation of why this process has been adopted and with what aim in mind. The research had an explicit aim to contribute to the debate and explore the potential of developing rights- based practice within the youth offending arena. This ties the researcher/s into a more accountable process and also means that there needs to be some thought and commitment shown to outcomes. The CAG were involved in discussions to determine what will happen to the research findings, how children who have contributed will be kept informed and also to address a key concern about whether the research is in any way transformative and impacts on practice.

3.14 Ethical Considerations

There are a number of ethical issues to consider: safeguarding; informed consent; confidentiality; and integrity were of the utmost importance. In addition to those were issues relating to participatory research (Manzo & Brightbill, 2007) and those associated specifically with social research with children (Alderson & Morrow, 2011).

There is an additional ethical dilemma inherent in the very concept of child-led research as commented on by the lead researcher in Alderson and Morrow (2011) which is that adults, academics, managers, practitioners, decision makers etc. may not take this research seriously or consider it 'proper research'. It is anticipated that demonstrating the important contribution that child-led research methodologies make, will lead to improved understanding and services for children.

Panter-Brick (2002) suggests that child-centred approaches which involve children as participants rather than subjects raise ethical concerns but that the issue of risk is also a consideration, particularly with children who come under public scrutiny and who fall

'outside accepted social boundaries or who are perceived as an endangered or a dangerous group'. This includes children where there is risk taking behaviour that may be a public health risk (HIV/AIDS, unintended pregnancy etc.) but would be just as applicable to those involved in, for example, offending behaviour.

Ethical issues in research have been widely discussed since concerns were raised in the 1940's about medical research on children (amongst others) carried out during the Second World War.

By the 1970's ethical issues around research *on* and *with* children had extended to other areas of social research (psychological, educational etc.) but it is important to note that the starting point for discussions and for the ethical frameworks that ensued were based in scientific research and specifically in medicine. The starting point for much of the debate was the incompetence/incapacity of children to give their own consent to be involved in research. Consent was, therefore, required from parents/guardians. There was also debate about the inadvisability for children to participate in research that was not of direct benefit to them (although this begs the question about who decides what is beneficial), and this therefore narrowed the field of interest.

The ethical issues that are discussed almost without exception focus on the following:

- Consent (informed consent) or latterly the concept of informed dissent (Alderson & Morrow, 2011; Driscoll, 2012; Morrow, unpublished) or assent (Docket & Perry, 2011)
- Confidentiality/anonymity (Fleming & Boeck, 2012; Shaw, Brady & Davy, 2011)
- Protection from harm and safeguarding (Alderson in Fraser et al., 2004)
- Payment/remuneration (Alderson & Morrow, 2011; Flicker, 2007)
- The outcomes of research projects and impact on children (Kirby, 2004)
- Power and authority (Smith, 2012; Thomas & O'Kane, 1998; West, in Banks, 1999).

A Code of Ethics or Ethical Guidelines for Community-Based Participatory Research (Connected Communities, 2012) has recently been developed and there are a number of

existing guidance documents, frameworks etc. around Social Research (ESRC, British Sociological Association etc.) and those that relate specifically to research with children (NCB etc.).

There is some agreement that the debate around research ethics with children can only take place within the context of the broader debate about the conceptualisation of childhood (James & Prout, 1997; James & James, 2004; Thomas & O'Kane, 1998) as discussed earlier. Understanding how researchers construct and understand childhood will influence their methodology and, therefore, their ethical stance. A recent and comprehensive review of the ethical issues involved in research with children (Powell, 2011) discusses these and the above in detail.

The discourse around safeguarding issues and protecting research participants from harm focuses specifically on issues of disclosure and there is consensus that adults carrying out research *with* and *on* children cannot guarantee absolute confidentiality. Where a child discloses information that suggests they may be at risk from harm this information must be passed on to the appropriate authorities. The principles of beneficence and non-maleficence (the principles of bio-medical ethics referred to as the Beauchamp & Childress Principles) underpin ethical issues around protecting children from harm.

It is assumed that disclosure in such cases will be around child abuse, family violence etc. There are differing opinions about whether referral to the appropriate authorities should take place following discussion with the child i.e. should only happen with their full knowledge and, where possible consent, but there is no disagreement about whether or not child protection and safeguarding issues should override any agreement

about confidentiality. Ost (2013) discusses achieving a balance between children's autonomy rights and their vulnerability and right to protection.

There is some debate around research on sensitive topics (family violence, sexual health etc.) in which children themselves may want to participate, but for which their parents may refuse to give consent. There are also debates around the role of adult gatekeepers (this may be parents, social workers etc.) and about the likelihood that this may prevent the very children who could be the richest source of evidence from participating in or indeed carrying out research because of safeguarding concerns.

Alongside concerns about adult responsibilities for safeguarding and protection there is a debate about children's agency and about their 'capacity to exercise sophisticated judgements about 'moral responsibility' (Smith, 2009, p 253). Work carried out by Such and Walker (2005) and quoted by Smith (2009) demonstrates both their competence and agency.

> Protecting children from harm is a genuine concern but a strong protectionist discourse can deny children the right to express their views on matters of concern to them and children may be gate-kept out of research on the basis of potential risk.
>
> Powell, 2011, p 2

Whilst harm is understood to be harm in the form of abuse/violence etc. there is little discussion about issues around the disclosure of information about children's involvement in risk taking or more specifically offending behaviour. Clearly in a research project with children involved in the criminal justice system this is an additional issue that needs to be considered. What, for example, is the role of a

researcher when confronted by a child disclosing information about or involvement in a criminal act? Is it different depending on the degree or severity of the offence? Should the information be passed on? And, if so, to whom: The Police, solicitor, parents? And, finally, in this situation is it different for children who disclose offending behaviour or would the same response be expected for an adult research participant?

Concerns have been voiced about research that gives children a bad press that 'shames, stigmatises or disadvantages' particular individual or groups of children (Alderson, 2004). If a child during the course of research divulges her involvement in criminal behaviour that gets her into further difficulties is it the responsibility/duty of the researcher to report this? How should the information be used? Can/should it be anonymised or indeed kept confidential?

An additional dimension of the rights agenda for children's involvement in research is suggested by Lundy and McEvoy (2011) who suggest that there is a need not only to create opportunities for children to express their views but also that they have a right to be supported to form their views on substantive issues, what is described as a rights-informed approach.

Participatory research is, therefore considered a 'good' thing in that it has the potential to uncover issues that traditional adult led research cannot. Is it, therefore necessarily not a good thing to carry out research, using participatory methods and supporting child researchers (i.e. research carried out *by* children rather than *with* or *on*) that uncovers and exposes unacceptable or even criminal behaviour? Does it further our understanding of juvenile offending and, if so, what are the possible consequences of this for individual children or indeed for the group of 'child offenders' that are already stigmatised and stereotyped by wider society.

An additional question is what do children themselves understand by the term 'ethics'? And has there been any attempt to involve children in developing ethical guidance or ethical frameworks? Do children have a seat on ethics committees within the NHS or universities in what are usually formal 'unfriendly' settings?

In the guidance that does exist about involving children in research projects (Kirby, 2004; Participationworks, 2009; Shaw, Brady & Davey, 2011) there is little advice on how to draw up an agreement with the children from the outset about an ethical framework specific to that project, and little reference to the issue about disclosure of criminal activity.

Banks in Becker, Bryman and Ferguson (2012) suggests that researchers should be mindful of ethical issues and should cultivate moral qualities including: ethical awareness, moral integrity/honesty, moral courage and professional wisdom and that through a process of discussion with supervisors and colleagues should decide what is acceptable and why. This study included children as both *researchers* and the *researched* from the outset to agree on what basis the research would be conducted and what the cut-off points were in terms of ethical issues including disclosures about offending. This collaborative, participatory approach which requires the expertise of all players including children (whether or not they are also offenders) was essential in order to agree the ethical stance of the project.

Ethical agreement:

- The CAG agreed that any children's safeguarding or child protection issues would be discussed initially with me and, thereafter with a manager from the institution. We also agreed that this should, wherever possible, be with the full knowledge and agreement of any child who had disclosed an issue of concern.

- We all agreed that we would be vigilant about confidentiality and anonymity and would not discuss any personal information with anyone other than within the CAG.
- The safety of members of the CAG themselves was discussed and it was agreed that they should feel safe and comfortable at all times. This meant ensuring that they were fully prepared and properly supported. They knew that they could call on me, as a co-researcher at any point during research activities and that I would, therefore, always be on hand.
- I made a commitment to the CAG and all other participants to use evidence from the research to try to make improvements in the way that children in custody were treated in the future i.e. that the research would have a longer term purpose over and above the requirements of the PhD.

3.15 Summary

There may yet be little in the way of innovative research that results in the emancipation of children or which produces the sort of social and political change that is being sought. However the emergence of a community of child researchers and adults who support child led research together with a commitment to the principles of a rights-based research framework is a step forward. By acknowledging my own theoretical position and the influences this placed on my research strategy, I hope to have addressed issues around researcher influence on both process and outcomes (O'Neill, 2001). An understanding of how I have approached this piece of work, my own understanding about how I perceive the world, the nature of knowledge and the importance of different realities is a fundamental element of the work.

Chapter 4 follows the progress of the research, looking at critical moments in the process and exploring the methodology.

Chapter 4

Herding cats!

Part I – The Research Process

4. Introduction

This chapter outlines the process that the research followed with descriptions of the various elements, and evidence that supports the chosen methods. The choice of a qualitative, participatory methodology has been outlined in the previous chapter. As the research itself, a PhD and therefore of adult origin, aimed to be a participatory research study it has attempted as far as is possible to create genuine pockets of participation (Franks, 2011). The following will describe how the research was completed and includes further elaboration of the various elements. Participatory research is inevitably messy, timescales slipped and elongated, people came and went and the plans were at all times fluid and flexible. Sometimes this drift felt uncomfortable, however the purpose and direction was clear from the outset. Keeping it moving in one direction without taking control was a little like herding cats!

The attempt was to create a research process which could accommodate the direct involvement of members of the CAG and that would reflect their interests, opinions and suggestions. At the same time it had an explicit aim to explore children's experiences of physical restraint in custody from a rights perspective by creating research spaces in which children were free to pursue and open up their own experiences.

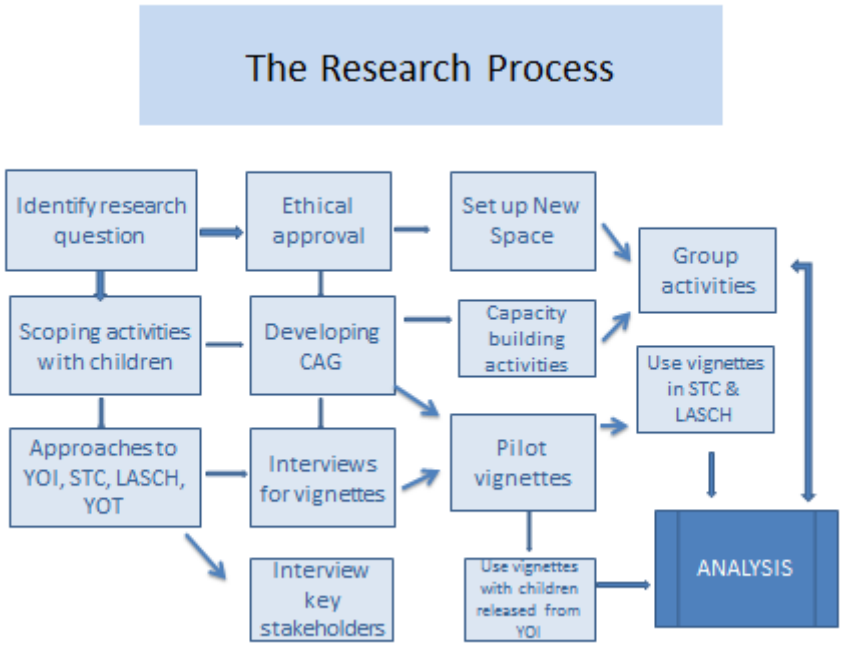
Children were at the heart of both the research design and the process. It involved three different groups of children. In order to thread the voice of children throughout the

work it was important to be able to demonstrate that children could be involved as advisors (the CAG), as researchers (again members of the CAG) and as participants (children who had recently been in custody or those who were incarcerated). It was important from a rights perspective to be able to promote the rights of children to voice an opinion in matters that affect them, as described above. The incarceration of children is an issue that affects not only the children whose liberty has been restricted but also those around them. The research aimed to demonstrate that the way children experience the use of physical restraint when they are locked up results from the way that children generally, and children who offend specifically, are perceived and conceptualised. If, as has already been argued above, children and childhood is socially constructed, the way that particular groups of children are perceived, it can be argued, is also socially constructed. I would also suggest that children in conflict with the law, and specifically those who are then incarcerated, are currently perceived in one of two ways. They are *either*: beyond control; that they are unsafe to remain in society; that their behaviour is unmanageable in the community; *or* that they are vulnerable; lack the capacity to make reasonable decisions; that they need 'treatment' i.e. that they are either mad and or bad. None of these conceptualisations reflect a view of children as citizens with rights, with agency and with capacity. Smith (2008) discusses the consequences of failing to understand or take account of children's agency particularly within the field of youth justice. James and James (2004) present an analysis of childhood and present models of childhood that take account of the law (James and James, 2004, p 67-69).

This research process, therefore, had an explicit aim to demonstrate children's agency by ensuring their involvement was central both in terms of the research process and by focusing specifically on children as participants.

Research which has addressed the experiences of children who have witnessed or experienced restraint has previously been carried out (Morgan, 2004, 2012). However the methods used and the premise upon which the research was based have indicated a very adult view of the world. This study attempted to generate evidence from children's own perspective and to explore how different methods might generate different evidence.

Diagram 4 – The research process



4.1 The Children's Advisory Group

Children's Advisory Groups or Young People's Advisory Groups have been used to support participatory research methodologies for some time (Fleming & Boeck, 2013; Shenton, 2006)

The CAG consisted of children between the ages of 13 and 18. They all lived in the north east of England and were recruited because they were children, not necessarily because they had any experience with the criminal justice system. These children did not all know each other prior to getting involved.

The process of recruitment: a group of children living on a particular housing estate and who had previous involvement in a community development project with Investing in Children (IiC) were invited to a meeting at their local community centre in February 2012. The research ideas were explained to them and a general discussion took place about issues that they raised including: what is research; rights; children's voice; breaking the law; the age of criminal responsibility etc. Another meeting was held the following week which children were invited to attend if they were interested in taking any further part in the research.

Approximately twelve children returned for the follow-up meeting. A series of group meetings were held in which the issues were debated further. Several children dipped into and out of the meetings and new ones (friends or cousins) joined the group. Lack of continuity with group membership was anticipated and by the end of November 2012 there was a group of 5 children who remained consistent and who have attended every meeting since. Children are busy and their lives are often complicated. One child dropped out over the Christmas of 2012 when he moved to another town to live with his father, and others took on jobs, caring responsibilities or simply lost interest. The weather played an important, if unexpected, role. During the October half term when a group activity had been planned for the Friday it had rained solidly every day up to the Friday. However on the final day of the school holidays the sun came out and none of the children turned up for the meeting having suddenly found other, much more

interesting, things to do outside in the sun. The lack of continuity and consistent membership of the group at this stage was not a problem. It created opportunities for a larger number of children to voice their opinions and to share ideas and suggestions.

At the outset it had been very clear to the group that their involvement was completely voluntary and that they could choose when and if to participate. No pressure was put on them to turn up to meetings and there was no consequence for them if they chose not to attend. This very flexible arrangement, whilst at times frustrating, has created two important outcomes. Firstly it has allowed the group greater responsibility for their own actions and secondly it has empowered them to consider the importance of their membership of the group. Without people turning up there is no CAG. Once the group of five gelled they have remained consistent and committed.

Characteristics of the group: there are three boys and two girls. Two of the boys are brothers, two are in the looked after system and placed in foster care, all of them are in mainstream school or are at college (although there are issues around attendance with two members of the group). None of the children has been in custody personally however one has an older sibling in custody. By way of an introduction to these children I have provided some evidence of their initial thoughts and views. Further evidence is discussed in Chapter 6.

i. Calvin and Jake

Calvin is 17 and Jake is 15, they are brothers. They are both in the 'Looked After' system and live with foster carers where they have been for the last three and a half years. They first came into care aged 9 and 11 although they have ongoing contact with their mother and grandmother at the time of writing. Calvin is in his second year of a bricklaying course at college and Jake is doing his school exams and then also wants to go into

construction. They were involved with Investing in Children several years ago through the Care Council but then dropped out for a while. They became interested in the CAG as part of this research through Thomas, another member of the group who lives near to them. Neither of them have had any involvement with the Police or criminal justice system.

They had the following observations to make: they felt that people who end up in secure accommodation who self –harm are alright, but that those who commit crime should receive harsher punishments. They were surprised at how many creature comforts the children in secure had and felt that it wasn't enough of a punishment. However they also had this to say:

> *They're all canny, they're all right they just committed a crime. It doesn't make them bad people.*
>
> Calvin, aged 17

When asked why he thought people got into crime Calvin said:

> *If you've been brought up in the wrong environment, it's all about how your parents bring you up. If you've got good manners, and you have good boundaries and rules you're alright. It's if your parents aren't really bothered.*
>
> Calvin, aged 17

So, whilst both of the brothers felt that elements of secure care were too lenient they also accepted that some of the children were placed there either because they self - harm, and are therefore in secure care for their own protection or, that they may have made poor choices in their lives as a result of bad parenting.

ii. Shannon

Shannon is 16 and lives with her mum, step dad and 12 year old sister. Her grandparents live next door. She has other aunties and uncles living on the same estate. She describes herself as shy and has been bullied whilst at school, eventually moving to a new school in Year 9. Shannon is now in her first year at college studying floristry which she loves. She became involved in some work within her local community aged about 11 when she was part of a community development project which was trying to make changes to the local estate. She became interested in being part of the CAG because it was something different.

> *I didn't know anyone who had been in custody, I didn't know what it was like. I thought they'd all be wild and like behind bars. But they all had TV's in their rooms.*
>
> Shannon, aged 16

To begin with Shannon was very anxious about going into custody and having watched TV programmes like the Discovery Channel 'Death Row' series, had all sorts of pre-conceptions about how inmates would behave. Initially she felt that the children she met were getting away with too much, having TV's and X boxes. However she also conceded that it was dependent on their age and on why they were locked up.

> *It should depend on your age, if you're like 10 then it shouldn't be like a prison.*
>
> Shannon, aged 16

Shannon felt that some of the regime worked because if you behave well in custody you can earn extra points so it makes the children work hard at being good. She was surprised at how different the two places were (she had visited both the LASCH and the STC). She had anticipated that they would be very similar in how they operated and was

surprised that one seemed stricter than the other and that there were mixed units in one and single sex units in the other. And, although she found the security requirements intimidating (having to be searched and go through a scanner in the STC) she also told me that she felt safer there because of the higher levels of staffing, the radios and CCTV.

Shannon was very involved with creating, piloting and use of the Vignettes and her feedback on this will be shared in Chapter 6.

iii. Zoe

Zoe is 14 and is in Year 10 at school. She lives with her parents and her brothers, aged 9 and 10, and her sister who is 6 years of age. She often babysits for her siblings whilst her mum and dad are at work. She describes herself as 'loud, and confident and don't care what I look like or what I say'.

She and Shannon's family are connected through Zoe's dad and Shannon's step-dad and she became involved in the CAG through Shannon. She was interested in doing the research because she wants to be a children's social worker and also she thought it would look good on her CV.

> *They're not as bad as you think they are, they're just like us and some of them are there for their own safety. They were quite sociable considering that they don't have contact with the outside world.*
>
> Zoe, aged 14

Zoe also had some observations about the methodology and about how the research could have been improved (see Chapter 6). Zoe in particular is really keen to go back inside and to do more work with some of those children that she met. She reflects on what she learned through the process.

I learned that I judge people too much. They didn't kick off or anything and they were telling us about their relationships inside. It made me realise they were just like us really.

Zoe, aged 14

iv. Thomas

Thomas is 16 and is in the first year of a college engineering course. He lives with his mum and step dad and two younger brothers. He has an older brother who is currently in prison on remand for an assault. Because he is charged with assaulting a minor Thomas isn't allowed to visit his brother which he finds difficult. Thomas' early family life was violent and his father was violent towards his mum, something that had a significant impact on him. Thomas has also experienced being bullied.

Thomas believes that the places he visited were too lenient and that there should be more of an element of punishment in the regime. He thinks that this might prove to be a deterrent to children.

Capacity building: Lundy & McEvoy (2011) put forward an argument for children to be supported not only to voice their opinions about issues that affect them, but also that they have a right to be supported to engage with substantive issues that are under investigation in, for example a research project, and to form an opinion on the matter. There are debates about whether or not children should be 'trained' as such to carry out research (Kirby, 1999: Kellet, 2004; Sharpe, 2009; Fleming & Boeck, 2012). An alternative view suggests that in fact children naturally bring a different perspective qua child and that training may in fact alter the child's capacity to bring to the research an entirely different perspective i.e. contemporaneous experience of being a child. This

research sat somewhere in the middle and ensured that there had been some capacity building with the CAG before we went ahead with any direct research.

The CAG was, therefore, supported to engage with and debate the issues around children's human rights, children in custody and the use of physical restraint. Over the summer holidays and into the autumn term the group met regularly and debated issues. They also used materials developed by the Prison Reform Trust (PRT) which were produced in 2013. The Talking Justice (PRT, 2013) materials included information and tools for group discussion about prisons and community sentencing in England and Wales and included a handbook 'Where do you stand?' and a DVD. Materials and activities from the handbook were used in conjunction with data about prisons and prisoners from the Bromley Briefings (2013) which were used to generate debate and discussion amongst group members. Discussions included issues around gender, minimum age of criminal responsibility (MACR), custodial versus community sentencing, what causes criminality and alternatives.

Example of questions for the CAG

At what age do you think children understand the difference between right and wrong?

Is there a difference between breaking the law and breaking rules?

Who makes the rules/the law?

Does it apply equally to everyone?

At what age should a child who commits an offence i.e. breaks the law, be prosecuted? (Does it depend on the offence? Who should decide?)

Is it different if someone breaks the law once, to people who break the law lots of times?

Should a child who commits a criminal offence be seen firstly as a child or as an offender?

Should children who break the law be locked up? Are there other ways that children should be treated/punished when they break the law?

Are some young people more likely to break the law than others? Who might they be and how would you tell?

What would be the best ways to find out what other young people think about these questions?

One of the issues that created a considerable amount of debate and which has had a significant impact on the research emerged when discussing the use of physical restraint within the secure estate. Several children voiced their concerns or described incidents in which they or siblings/friends/family members had been involved where physical restraint had been used. These included either Pupil Referral Units (PRU) or within school. These discussions revealed what, in my opinion, constitute the daily violence which many children routinely witness or are on the receiving end of. They were subject to and or lived with daily violence both physical and verbal;

> *When I was at the PRU they could stop you going out of the classroom, you know if you lost it and just needed to get out they could just hold you down or push you around to stop you getting out. Or sometimes they would just lock the doors so you couldn't get out.*
>
> Thomas, aged 16
>
> *In school the teachers just shout at you, if you are late or you are running in the corridor or you hand in your homework late or you haven't done it.*
>
> Zoe, aged 14
>
> *Yeah or just if they don't like you then they just shout at you anyway.*
>
> Shannon, aged 16

When my brother was arrested he got beaten up by the Police, they threw him into the van and kept him in the cells and didn't let anyone know where he was. My mam was going mad 'cos she didn't know where he was and when she got to see him he was all cut up and covered in bruises.

Me brother's just like me dad. He used to like hit me mam and that. That's why we had to move here to get away. I don't see him anymore but me brothers just grew up like him. Got a temper on him like.

Thomas, aged 16

Much discussion took place about what this meant for themselves and for children in custody. This revelation created a great deal of discussion about rights and issues around where, when and by whom the group thought the use of physical restraint was acceptable and when it wasn't. This one discussion shaped the way that the Vignettes were used by adding a specific question about where else physical restraint might be appropriate and proved crucial to the issue about rights within a secure setting and the attitudes of staff.

Well I think it's fair enough. If you break the law then you have to take the consequences. And if you treat the prison guards right then I'm supposing that they will treat you right. And if they don't well then it's sort of your fault anyway for being there.

Thomas, aged 16

If it's too soft in there then you won't learn anything and you'll just come out the same. If it's not really a punishment then what's the point in locking them up?

Zoe, aged 14

Not all of the CAG agreed with how children should be treated in custody and both Calvin and Jake had a more complex take on how children should be treated;

> *It's not always their fault that they're like that. If they've had bad parents or no one to give them advice or boundaries they've just been able to do what they like that's not like their fault. When they get in trouble and if they are locked up then they need someone to teach them, be proper parents and to give them like strong boundaries and teach them if they step out of line.*
>
> Calvin, aged17

For brothers Calvin and Jake it is possible that their own experiences of being in the 'Looked After' system and of living with foster carers gave them a greater insight into parenting, boundaries and so on. However their take on boundaries and of the consequences of breaking rules, specifically for children in custody, included the use of physical restraint to '*teach them a lesson'*.

The outcome of a great deal of debate around this issue within the CAG and with me was that the use of restraint was acceptable, indeed sometimes in the best interests of children (i.e. for their own good, to teach them a lesson etc.). However it was clearly unacceptable within other community or semi-open settings such as schools, youth clubs or the PRU. The other clear distinction was that it was only ever acceptable if used by someone who was properly trained.

Information and activities around children's rights and human rights were also used. The UNICEF Rights Respecting Schools materials were used including: the Wants and Needs Cards (UNICEF Rights Respecting Schools Resources) which support a series of group activities in which children are encouraged to debate the difference between a

WANT and a NEED. The aim is to help children to understand that basic needs enshrined by the UNCRC should be met to ensure that children grow up to meet their full potential. We also used The Rights Quiz 2010 (Practical Participation Ltd.) which looks at what knowledge people have about outcomes for children and challenges the idea that things are better than they have ever been for children in the UK in the 21st Century. This is explored further in Chapter 6.

Children as research advisors: Once the CAG felt fully prepared they were involved in several distinct areas:

- Developing an ethical framework
- Developing and piloting the research tools (Vignettes, Agenda Days)
- Carrying out interviews, running focus groups
- Analysis and discussion

We discussed what they felt comfortable doing, what support they wanted, how this should be provided and we had agreements about contingency plans to give them a strategy for coping if situations got out of hand.

Incentives: Members of the CAG were paid for their time and were given additional travel and subsistence where necessary. Paying children for their involvement can prove controversial and there are those who disapprove (see Abebe, 2009). It is a simple argument however. Paying children has several outcomes: it recognises and values their contribution and their expertise; it places them on a more equal footing with adult researchers (they should not be the only people involved who are not being paid); and it also addresses the financial difficulties many children face. If I had been unable to pay, it is likely that some members of the CAG would not have been able to participate at all.

4.2 Vignettes

Vignettes have been used as a research method to elicit evidence about sensitive topics such as Aids/HIV (McKeganey, Abel & Hay, 1996) or violence (Barter & Renold, 2000) and are regarded as a powerful way of encouraging a discussion with research participants about belief systems.

> However, what the available literature does clearly demonstrate is the ability of this technique to capture how meanings, beliefs, judgements and actions are situationally positioned.
>
> Barter & Renold, 2000, p 308

The Vignettes were developed to generate discussion around sensitive issues, as one of the methods for collecting data in this study, which provide an opportunity for children to explore the issues associated with physical restraint from their own perspective. The CAG was involved in deciding other methods that were used.

The case for using Vignettes: Vignettes are deemed particularly useful to generate discussion around difficult or sensitive topics and it was considered, therefore, that they might prove useful in this study.

How they were developed: A Youth Offending Team had been approached and had agreed to participate in the research. Ethical approval had been applied for and granted by the local authority Research Advisory Group. Meetings took place firstly with the Principal Officer within the YOT and her senior management team and then with the Senior Practitioners within the service.

They were asked to identify children who had been in custody in any one of the three types of secure establishment in the preceding 6-12months. This could be children

either on remand or sentenced. A small number of other individual children were also approached through their youth workers.

A small group of eight children were approached by their allocated YOT worker or youth worker and the outline of the research was explained to them. With their agreement I also gathered parental/carer consent. It had been agreed with the YOT that for any child under the age of 16, I should request both the child's consent and that of a parent or carer. I then met with all eight children to carry out one to one interviews investigating their experience of either being restrained or witnessing physical interventions including restraint. Information was then transcribed by the researcher and a further meeting was held with each child to ensure that the information had been recorded correctly and any interpretation, amendments etc. was accurate. Once all of the interviewees had given their consent a series of five Vignettes was developed.

The five scenarios (see below) were anonymised to protect the identity of the children whose experiences they reflected. The information was then mixed up to generate a series of situations that were amalgamations of the actual events so that it was not possible to identify any of the children individually or any of the settings or establishments in which the incidents had taken place.

The questions that were asked at the end of the scenario were developed with the CAG and each included a specific question about whether, if the circumstances were the same use of restraint would be acceptable if it had happened in a school, PRU, youth club etc. i.e. if it happened anywhere that wasn't a secure setting.

The Vignettes were then used initially with the five members of the CAG who practiced using them with each other, developed a set of questions and then discussed some of the issues that were raised.

Piloting: At the end of May 2013 the CAG were ready to pilot the Vignettes. The five members of the CAG invited a larger group of 21 children, aged between 8 and 18 into a session at a local community centre. They worked in pairs or individually and had selected one of the five Vignettes to work on. They worked with small groups of children to try out the materials that they had developed, wrote up the notes as they went along and identified issues while they were working.

Feedback from the session included:

- The Vignettes were too long and complicated
- The presentation was really dull
- It was difficult to follow the individual characters that were part of each scenario
- The questions were very repetitive
- They found it difficult to generate discussion or ask supplementary questions

Following the initial pilot, members of the CAG refined the questions and developed a Power Point presentation (**Diagram – 9**) that could be taken into secure settings with fictitious characters to depict those described in the text, therefore making it easier to identify with and to follow what was happening in each situation. By this stage each member of the CAG had chosen a particular Vignette that they were comfortable using.

Use of the Vignettes in custody: Once the CAG had made changes to the format and revised the set of questions that followed, they were ready to conduct the next stage of the research with children in custody. Children in custody who agreed to participate in this part of the research had all been involved in the NewSpace/MySpace (see below) and had volunteered to be involved, after discussing the issues in their own meetings.

4.3 Agenda Days

The use of Agenda Days as a research tool has been developed by Investing in Children. Building on the method of peer led focus groups (Murray, 2006) the Agenda Day model takes the concept a step further. An Agenda Day is an adult free space facilitated by children in which an issue is discussed and debated. Their aim is to create an agenda - hence the name - which can then be presented to adults (decision – makers, budget holders, strategic managers etc.) so that, in partnership, adults and children can work together on the issues that have been raised with a view to making improvements. Adults play a role in ensuring that children's safeguarding issues are addressed i.e. that the events take place in a safe, accessible space and that any problems can be resolved etc. Therefore, the adults take responsibility for safety and ethical issues whilst the facilitators engage in dialogue with the other participants.

The model can be adapted to work with all age ranges and with children of different levels of ability, different communication skills and living in a variety of circumstances. The assumptions about children that underpin this approach as set out by Todd (2012) are critical and that the emphasis is on what she describes as 'knowledge construction rather than knowledge extraction' is fundamental.

Agenda Days were therefore conducted by members of the CAG within the secure settings to elicit a greater understanding about the children's experiences in custody so that the use of physical restraint within each setting could be understood within the specific context. These proved illuminating and helped to generate an understanding of the issues for children in custody as well as those who were researchers, in this context.

Questions developed by the facilitators

Is school different?

Do you have the same hours for school?

What time do you have to go to bed?

Do you have a phone?

How often do you get to see your family?

Are there other ways to deal with restraint?

How do you complain and who to?

What other ways are here to calm down instead of getting restrained?

What situation do you think it is right to get restrained?

What would you like to happen after being restrained?

What are you allowed in your room?

When you are stressed and kick off do you get restrained? Does his make you more stressed? How do you calm down then?

How would you train staff to deal with difficult situations?

4.4 Research spaces

The case for creating spaces: The concept for creating a space for the research to be located is based on that defined by Bolzan and Gale (2011) and also borrows from some of the work carried out by human geographers and from the field of childhood studies (as described above).

> 'Interrupted spaces' is the term we have coined to describe an interruption in the usual life worlds of our research participants.
>
> Bolzan & Gale, 2011, p 503

In the research that they describe they create an interrupted space to explore issues around social resilience with marginalised children and what they describe as new ways of being and to have their views and perspectives respected by adults.

It seemed that the concept and the way that it was pursued by Bolzan & Gale had much to offer in a piece of exploratory, participatory research with children in a very sensitive area of work. Although the specifics of the Bolzan & Gale study (based on Blaikie, 2007) are very different it seemed that there was something to be learned from the concept itself. Some of the complexities about children's participation and the production of social spaces (Gallagher, 2006) as well as issues about agency, power and control are also, however, acknowledged.

The idea of an interrupted space was discussed with two of the secure facilities (LASCH & STC) and it was agreed that a Project Worker from IiC and I would create a New Space in each of the secure settings in which the children could discuss any issues they wanted to. Whilst this has been a separate and ongoing piece of work that is broader than the study itself it did create an ideal opportunity in which to locate the research as a separate but linked area of work.

Creating New Space and Myspace: In one of the secure settings a new space 'MySpace' was created and in the second a 'New Space'. These were regular meetings conducted in a neutral place either a common room, or on site youth club i.e. not within either the educational or residential facilities. Using the concept of 'fluid consent' (Larkins 2014) the residents could choose whether to attend or not and were free to leave at any point during meetings. There was no agenda for the meetings and, apart from the IiC Project Worker and I, no other staff were present. Participants were free to raise any issue that

they were interested in or concerned about and then to decide as a group what, if anything, they wanted to do about the issue.

> We wanted to offer young people the opportunity of identifying issues of concern to them in the community and the chance to be involved in 'fixing' it.
>
> Bolzan & Gale, 2011, p 507

> The interrupted spaces approach attempted to provide an environment in which marginalised young people could access power resources previously unavailable to them; most notably those resources of being the decision makers, having an adult to assist but not direct them.
>
> Bolzan & Gale, 2011, p 513

The creation of spaces in which children who whose liberty had been restricted and for whom there was relatively little actual physical space and even less scope to make their own decisions freed them up to be able to voice concerns and issues as well as to come up with ideas and solutions. Inevitably the issue of staff attitudes, use of isolation and use of physical interventions was raised by both groups of children in separate settings and they were then given the opportunity to further explore the issues as part of this study.

My previous experience in professional practice suggested that the issue of how challenging behaviour is managed within the secure estate would be raised by children who are incarcerated. It was, therefore, considered highly likely that this would occur within the spaces that had been created. Great care was also taken not to ask leading questions or, to put words in their mouths. When the issue was raised the participants in the MySpace or New Space were asked if they were interested in taking part in an

ongoing research project as a separate activity. In this way the emphasis was on children giving fully informed consent to take part in a piece of research on an issue that they had identified as being of interest/concern to them. This was felt to be creating an ethical relationship between children and adults (Clark, in Todd, 2011) in which the idea of ongoing assent could be operationalised.

In total my colleague and I ran 19 My Space meetings in the LASCH and 15 New Space meetings in STC. Of these members of the CAG accompanied us for four of these in each setting, running their own sessions in each. Separate sessions were then set up for Focus Groups or one to one interviews with children whilst they were in custody.

4.5 Research diary

Throughout the study I kept a research diary. The main purpose of the diary was as follows:

- Record thoughts, personal reflections and ideas
- Record research activities, personal impressions, documenting progress
- Noting ideas from reading
- Recording insights/reflections/critical reflections

The journal created a useful space for reflection, freewriting, reminders, 'notes to self', and for collecting thoughts and ideas. It was also, often, a place to off load when things were not working or went wrong and of clarifying my 'baggage' or unravelling the subjective views of the way I look at the world (Ortlipp, 2008).

> I began to see the relevance and suitability of this reflective writing process for the way I was conceptualising my study and enacting my research as an

> individual with particular personal experiences, desires, and ways of looking at the world.
>
> Ortlipp, 2008, p 700

Keeping a reflective research diary enabled me to remain close to the evidence that was collected and to be able to engage with some of the methodological and ethical issues along the way. It has helped me to view the process of 'herding cats' as being part and parcel of this study and not to try to micro-manage confusion, untidiness, obstacles and mistakes.

> Keeping and using a reflective research journals can make the messiness of the research process visible to the researcher who can then make it visible for those who read the research and thus avoid producing, reproducing, and circulating the discourse of research as a neat and linear process.
>
> Ortlipp, 2008, p 704

Excerpts from the diary have been used in the next chapter as evidence of findings within the study and have helped to illuminate and elaborate on some of the issues that the CAG and research participants uncovered.

4.6 Access to children in custody

In September 2011 initial approaches were made to a Youth Offending Team (YOT), with a LASCH and with a STC and some early approaches were made to YOI. The YOT, LASCH and STC all indicated their willingness to participate in the research. Each had their own internal approval processes, ethical approval or research groups to be addressed.

In both the LASCH and the STC, in addition to getting permission to start the New Space sessions, approval was also needed for children to participate in the separate research activities. Access to children who had been in custody was agreed by the YOT and approval was given trough the local authority's Research Advisory Group. Once this had been given and once the University Ethical Approval Committee had consented for the research to proceed, access to children was very straightforward. Children were given information by their YOT worker and, if they were interested, they were asked to give consent as well as parental/carer consent if they were under- 16.

Access to children in LASCH was also relatively straight forward. Having obtained the approval from the Secure Services Manager and through the Local Authority Research Advisory Group access was given to children as part of the New Space activities.

Access through the STC proved more challenging. Initial agreement was reached through the Operations Manager who had discussed the research with the Management Team and Director. In order for the New Space activities to proceed, both the Researcher and the IiC Project Worker were required to complete extensive application forms, gain DBS clearance and provide character references, employers' references that covered the previous 10 years employment and to sign the Official Secrets Act 1989. As I had spent several years in a freelance capacity the HR department required a reference from an accountant in addition to invoices and evidence of financial stability for the period of self- employment. This took a considerable length of time.

Once the various references and clearances had been approved work commenced on the New Space activities. Additional parental/carer consent was required for individual children to participate in the research process. Once the child researchers' activity was

planned the YJB Monitor required additional information about their names, ages, school placements etc. as well as copies of their parental/carer consent.

The My Space and New Space initiatives commenced in the autumn of 2013 with meetings once a fortnight. The separate sessions which members of the CAG facilitated and in which the Vignettes were used took place in late 2013 and early 2014.

Direct access to children in a YOI eventually proved impossible. Initial approaches were made directly to one YOI, to the YJB and through support services such as the Prison Psychology Service and advocacy services. Approaches were also made through other researchers. However, within the timescales available it proved impossible to get agreement. Rather than to simply lose the perspective of children who had been in custody within a YOI, access was given through the YOT and I was able to interview children immediately after their release from YOI custody.

My colleague and I were given the option of carrying keys so that we could come and go as we wanted. This did not sit comfortably with us as we wanted to be seen very definitely as 'outsiders' to the organisations and to be *in* and not *of* the institutions. The children we met had clear ideas about who could do what i.e. whether you were a badged officer or not, and carrying keys and radios was symbolic of a status which was not relevant to us as researchers and might have created additional obstacles.

4.7 Focus groups and interviews

Although this is very clearly a study that promotes the voice of children I have included a small section of adult views. This sits uncomfortably within the research, however, early on in the research, during a scoping exercise I had attended a seminar on ethical considerations in community based research which had included presentations from a

number of service user groups that had been involved as researchers. One of these was a group of adult mental health service users who had done some research looking at their own mental health services. I made arrangements to visit them to discuss their own experience of being involved as researchers and research advisors.

This proved a useful and insightful exchange of views and one that helped to shape the way that part of the research was conducted. The service users wanted to know why this study was only seeking the views of the children involved and why there were no plans to ascertain the views of staff members within the secure estate. This, they felt, was leaving out an important perspective which creates a context in which users views can be better understood. Whilst this study is very specifically aimed at creating spaces for children's voices to be heard I did partially accept their argument.

Taking this on board, I conducted twenty three interviews with key informants including: staff from the secure estate; lawyers; children's rights activists and campaigners (see **Diagram 6**). The interviews were conducted on a one to one basis and followed a flexible interview schedule (see Appendices) that was adapted each time depending on who the respondent was and in which setting she worked. This data is reported as a separate section in Chapter 5.

Part II – Exploring the evidence

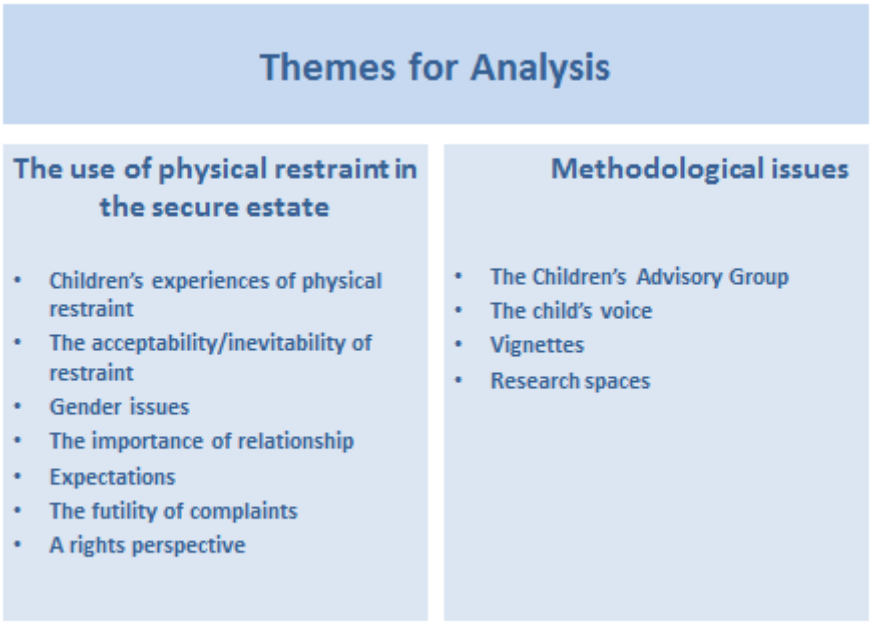
4.11 Introduction

The software package NVivo is currently a very popular tool used to analyse qualitative data and many of my contemporaries are using this in their research. I attended training, twice, to become familiar with the concepts and the tools. The package was developed by Tom Richards in the early 80's, its predecessor being NUD*IST. Richards had developed the software for his wife Lyn Richards a sociologist at the University of Melbourne who was, at the time, struggling with a huge quantity of data from a large neighborhood research project. She had sheets of paper with quotes from participants piled thematically and scattered over their living room floor, 'along with dogs and babies'. The software package was designed to assist with managing and analysing the data.

> There are five principle ways in which NVivo supports analysis of qualitative data:
>
> - Manage data
> - Manage ideas
> - Query data
> - Graphically model
> - Report from the data
>
> Bazeley, 2007, p2

I have used NUD*IST previously and I considered using NVivo for this research but rejected the idea almost for the very reasons that the Richards developed it. I have found that I need to be immersed in research and to do this I need to be surrounded by flipcharts, transcriptions and coloured post- it notes. I always record and transcribe all my own interviews, notes etc. and write up notes of meetings, my research diary and colour code journal articles, books and conference papers. I understand the coded sticky arrows, the coloured post-its, the scribbles on the transcriptions and the lists. Using a software package to generate codes and to manage and interrogate data would be a distraction and would remove me from the data itself creating a distance that I find unhelpful. I can easily lose the thread and meaning if the research evidence is too remote and using NVivo removes me from what people have told me, from the way in which they told their stories or re-lived their experiences and from how they looked and felt when they were talking. **Diagram 5** below sets out the themes which emerged.

Diagram 5 - Themes for analysis



Keeping a research diary enabled me to reflect, to list, to plan, to remind and remember. It allowed me to consider the journey and distance travelled and to look at how issues had emerged and been shaped by people, events, conversations and by reading. Working with and recording the sessions with the CAG helped me to see things from an entirely different perspective, through the eyes of children as children i.e. not as researchers, not as adults, not as offenders and not as academics but purely as children. Their inquisitiveness and openness was refreshing. They would ask questions that made clear both how little they actually knew but also how many assumptions they had made. Smith (2010) suggests that one of the distinctive aspects of childhood (p 183) is around 'acquiring knowledge and learning from experience'. In this study one of the greatest qualities that the children in the CAG brought to the process was their inexperience and, therefore, their lack of certainty. However this was combined with an ability to process complex ideas and information and to challenge both their own thinking and that of others. Rather than either creating less certainty or making them more dogmatic, their ability to take on this new information and new experiences enabled them to acquire knowledge and to learn. Their first visit to the LASCH was fascinating in that it demonstrated all sorts of pre-conceived ideas they had about the 'criminal' child, about locked institutions and about 'other' children. However their first encounters with children in custody gave them an opportunity to reflect on these ideas. Their accounts are described following **Diagram 9** - below.

Recording and then transcribing the interviews which generated the data for developing the Vignettes provided a clear context in which the research should take place. The first set of interviews with children who had just been released from custody provided first hand, direct evidence of children's own experiences from having been involved in or witnessed the use of restraint in custody and about how they felt about

these experiences. Their stories and accounts of their time inside provided a baseline from which the rest of the research would be conducted. I have re-produced these in the form of the Vignettes, which follow.

Creating the New Space in which much of the rest of the research was conducted proved invaluable. It provided a space from which evidence could be gathered and created the opportunity to generate data from several different sources. Data was gathered from the groups generally about all sorts of issues and concerns that the children had. These issues were presented to the management teams of the LASCH and STC respectively as part of a process each centre had developed for involving children in reviewing and commenting on the care they received. It was part of their commitment to children's participation rights. Issues around separation and physical restraint were raised naturally and inevitably within both institutions and also by the children who had been in YOI. This paved the way for me to ask children if they were interested in taking part in my research about the use of physical restraint in custody, about exploring alternatives and investigating a rights-based approach. This process addressed the issues about consent and assent as these children were very well informed about the PhD research and about whether or not it was something that they wanted to contribute to. It also partially addressed the ethical issues about whether or not children get anything out of research when they are participants. The New Space meetings had a purpose of their own that was separate to this study. All of the New Space meetings were recorded and information from various discussions, presentations and reviews was accessible.

By being deeply absorbed within the data that I have been instrumental in both collecting and analysing, I am confident about the quality and reality of the findings.

Members of the CAG were involved in identifying general themes for further analysis but the remainder was my work.

4.12 Data comparison

It is important to be clear at this point that no attempt is made here to compare the different institutions. There are important and significant differences between the three institutions that make up the secure estate. They are run by different organisations, operate under different sets of rules, and employ different staff with varying levels of qualifications, training and experience. Each has a separate identity, history and ethos. Without investigating the three institutions in detail in order to identify differences and similarities it makes no sense to create comparisons.

Children involved in this study have experienced some or all of the three institutions and do, inevitably, make comparisons. They see one regime as either harsher, or more lenient than another, or the staff as stricter or friendlier (see also Steckley, 2010). For many they also have a sense of progression or the existence of a tariff that is dependent on age, the offence committed or on behaviour. On occasions they identify a sense of 'inevitability' about progressing from one to the next.

When I met a child in STC who I had previously met in LASCH I asked him where else he had been i.e. other secure establishments and he had been to two other STCs. When I asked if he had ever been to YOI he said 'not yet'.

The research evidence was gathered from a variety of sources and involved the researcher and the CAG. **Diagram - 6** below shows where the evidence was generated from and indicates how much of the research findings involved the voice of children.

Diagram 6 – Research evidence

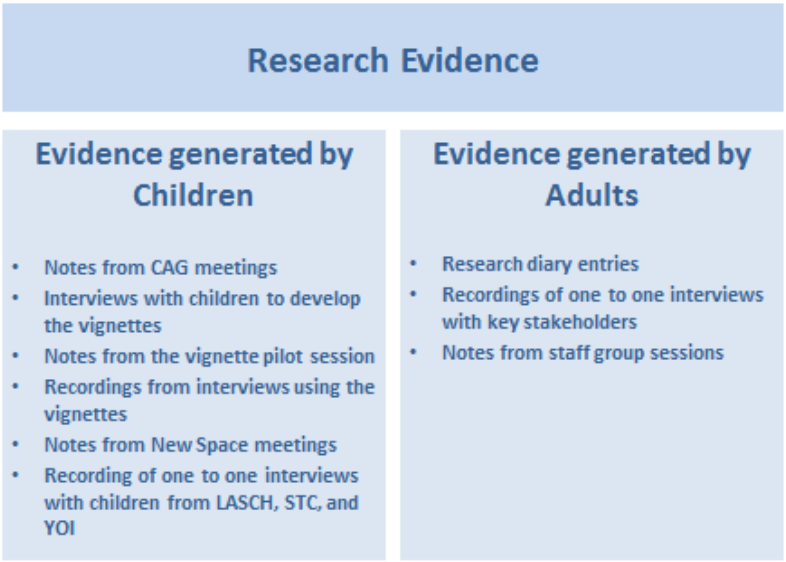
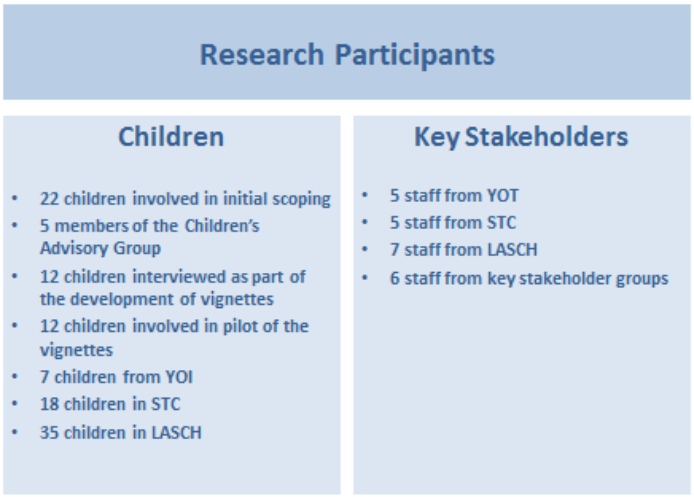


Diagram 7 below provides a breakdown of the individuals who participated in the research. A total of 111 children took part, in one way or another, and 23 adult stakeholders (including members of the YOT, staff from STC and LASCH, staff from children's rights and criminal justice NGO's, academics and lawyers).

Diagram 7 – Research participants



Of the children who participated in the research they were involved in the following activities;

Activity	Number involved
Initial discussion groups	22
Children's Advisory Group	5
One to one interviews with children who had been released from custody	12
Children's event to pilot the Vignettes	12
Interviews with children upon release from YOI	7
Children involved in Focus Groups/Agenda Days/interviews (in LASCH & STC)	53
TOTAL	111

Diagram 8 – Children's Research Activities

Part III – Children's Voice

4.20 Introduction

Part III of this chapter looks at the role and importance of the voice of the child both in the research process and in exploring of the use of restraint in the secure estate. It will investigate and report on the following issues:

- Analytical moments with the CAG
- The importance of creating a research space
- Exploring alternatives

Abbott (2012) discusses the importance of acknowledging both the adult and the child's voice during the research process and about the need for honesty and reflection about the dynamic nature of the research process. Tisdall (2012) also questions the representation of the child's voice in research. I have tried to include the voice and voices of children in this study by including many children at different points and in different ways. I was keen to make sure that I had a way of ensuring that children could be the checks and balances, both the critical friend and the devil's advocate during the research as well as participants and respondents. That has made it more difficult, more complex and messy as well as richer and more meaningful. I had some clear expectations about how I wanted to conduct the research, about timescales and processes and also about anticipated outcomes. Askins and Pain (2011) refer to messiness as 'the complex and irresolvable politics of interaction' and highlight the place of researchers within the mess, all of which is relevant to this study, its complexities and 'unforeseeable encounters'.

I had some pre-conceived ideas about what children might want to talk about and the issues that they might find difficult, or that they might think were important. And I had plans for where, when and how the processes would take place. These changed organically as more children contributed. Some of these changes are described below.

4.21 Analytical moments with the CAG

The involvement of children in the CAG provided a number of pivotal moments within the research process that altered and shaped it and helped it to change course. These were:

- Children's lack of knowledge about the criminal justice system, about the Police and about their rights meant we had to start at a different place before the research could go ahead
- Grounding the research in an understanding of children's concepts of MACR, what constitutes a crime, what you can be arrested and/or locked up for, what prison is for and whether or not it works.
- Understanding what children know of or understand to be their rights.
- What children expected about how they should be treated in custody as opposed to school, youth club, PRU or at home, specifically about the circumstances in which staff were permitted to use physical restraint
- Shaping the Vignettes to make them more interesting and useful
- Reactions to and observations about being in a secure environment
- Creating dialogue with children in custody that paved the way for us to discuss a variety of sensitive as well as everyday issues
- Exploring alternatives to dealing with challenging situations including fighting and threatened assaults, self- harm etc.

Reflections on the CAG

- Issues around stability of membership, young people moving away (Josh at Christmas) (Shannon doing a hairdressers course) and how to retain the interest of the group, Jess really keen but not enough at this stage to get her teeth into so may be losing interest.
- Issues around continuity & turnover, what are they expecting what are their commitments?
- To what extent can it be participatory research if young people haven't been involved in setting the research agenda, choosing the subject area, etc.
- Young people in the group have identified the issue about misunderstandings about age of criminal responsibility i.e. don't know when it is/what age?
- Also about use of restraint in PRU but not in custody.

Diary entry 19.3.13

None of the members of the CAG had been involved in a research project before. The term 'research' to them meant something that you did in school for an assignment or a project. Usually this was done online. So 'researching something', for these children, means – 'you Google it'.

However we spent several sessions with a large group of children aged between 7 and 19 discussing a broad range of issues including what are rights? The facts about when you could be arrested, the minimum age of criminal responsibility, and the rights and wrongs of imprisonment and custody. We also discussed the meaning of research, what it looked like, its purpose and the many various ways it can be conducted.

There has, over recent years, been a great deal of discussion about the need to train child researchers (Kellett, 2010; Sharpe 2009; Tisdall, 2012). I accept the need to ensure that children are sufficiently briefed to be clear about what they are doing and to prevent them feeling unprepared or out of their depth. This requires some capacity building so that children are sufficiently prepared. However it is their status as children and not as researchers that, I believe, makes their involvement so much more meaningful and powerful than *just* that of adult researchers. As suggested above I am concerned that training children in research techniques may in fact train out of them the very essence and qualities that they bring to the research.

4.22 Shaping the Vignettes

The idea of using the Vignettes came from my supervisory team at the time, as a suggestion for exploring difficult and sensitive topics with children in custody. Once the Vignettes had been written up in draft format they were shared with the CAG. Some initial thoughts were shared and then members of the group practiced them with each other. There were immediately issues that hadn't occurred to me. One member of the group needed the transcripts written onto green paper as she is dyslexic and couldn't read what I had printed. Several found the scenarios too long and too complicated and couldn't follow who or what was going on in the situations.

> *We thought the meeting we had was a bit complicated and stressful as there were too many questions, it took too long to write down so we think instead of writing it down we should record it and to make it more interesting for us and the group we were working with.*
>
> Feedback from the CAG

Members of the CAG selected a vignette each and then practiced them on each other, amended the questions and adapted the text so that they understood what was happening in each scenario and were confident about asking supplementary questions and probing further into the answers they received. They also developed Power Point presentations to make the use of the Vignettes more visual, powerful and interactive.

> *I couldn't follow who was who when it was just written down and I didn't know who was doing what. I thought if we just put it into pictures it would be easier to follow.*
>
> Shannon, aged 16

Diagram 9 - Power Point Slides Developed by CAG

The Vignettes are provided here in full as the scenarios that are recounted provide first hand reports from children who were involved or witnessed these events.

a) Lewis - Vignette A

Lewis is 16 and is serving a 4 month sentence in secure. He has been there for about 6 weeks. He is just coming out of his room when John, who is 17, walks up to him and starts calling him names. John has been in the unit for nearly 11 weeks and doesn't like Lewis because he is from Liverpool and he doesn't like his scouse accent. Lewis ignores John to

start off with and then, when John continues to shout at him, he snaps and punches John on the side of his head and tries to walk off. John marches after him shouting at him and waving his arms around. All the other young people on the unit are now watching whilst this happens. A member of staff asks both John and Lewis to stop shouting at each other and to get ready to go to education. Lewis tries to tell the member of staff that he hasn't done anything wrong and that John started it. John continues to shout at Lewis and calling him names and says that Lewis punched him. Lewis pushes past the member of staff and tries to punch John again. The member of staff shouts for another member of staff to help him and between them they pull Lewis onto the floor and hold him face down on the floor with his hands held behind his back.

Questions (each set of questions was altered slightly to fit the situation being described)

1. What do you think of Lewis getting restrained in this situation
2. Where they any other ways of dealing with this
3. Once Lewis had punched John the first time how might this have been dealt with?
4. What could have been done to stop this situation happening in the first place?
5. If this incident took place in a school (PRU, youth club, residential care home) would you think the use of restraint was OK? Can you tell me more about why you think that?

b) **Nathan - Vignette B**

Mark and Nathan are both 16 and have been on the same unit for the past 5 weeks. They grew up in the same area and have known each other for a long time. They are playing pool during activities, and are playing for Lynx shower gels. Mark accuses Nathan of

cheating and of moving one of the balls on the table. Nathan laughs at Mark and tells him he is just a better player and that he doesn't need to cheat to win.

A number of the other lads on the unit start to join in and tell Mark he is a rubbish player and start calling him names and laughing at him. Nathan stands up for his mate and when an older lad, Jamie, starts to make abusive remarks about Mark's family Nathan threatens him with the pool cue.

A member of staff has just come on shift and walked onto the unit. The first thing he sees is Nathan waving the pool cue at Jamie. He places himself between the two young people and when Nathan pushes the pool cue at Jamie again he is immediately brought to the ground by the member of staff and is held down when another member of staff arrives.

c) Amber - Vignette C

Amber is 15 she is from London and has been in secure for almost 5 months. She has ordered some make- up two weeks ago but it hasn't arrived. She has been asking staff about it but every time she asks they tell her 'it's on order'. She wants the make- up because her boyfriend Stuart is visiting in 2 days' time and she hasn't seen him for weeks. She feels that the staff are not taking her seriously and that they aren't listening to her.

Today it hasn't arrived again and when the member of staff tells her it isn't there she shouts and swears at the staff calling them abusive names and standing right up close to their faces when she is shouting at them. Two of the other girls on the unit start to join in and are shouting about items that they have ordered that also haven't arrived.

Amber starts shouting at the other girls as well saying that they should fight their own battles and that it is her make-up that she wants not theirs. Amber is asked to go to her room to cool down. She refuses and carries on swearing at the staff.

Two additional members of staff arrive and when Amber again refuses to go to her room and calm down she is held by each arm and dragged away into her room. She is struggling all the way so that 1st response is called and more members of staff arrive to make her go to her room.

d) Anthony - Vignette D

Stephen is 15 he has some learning difficulties and has been on the unit for 3 weeks. Luke is 17and has been on the same unit for 13 weeks. This is Luke's third time in custody and he is very well known by staff and other young people. Luke has been bullying Stephen and taking his shower gels off him. Anthony, aged 16, has the room next door to Stephen and hears him crying sometimes at night in his room. He has tried to tell members of staff about Stephen being bullied. He is frightened of standing up for Stephen in front of the other lads because he thinks he will get bullied too. Anthony was bullied when he was in primary school and knows how it feels. He is worried about Stephen who he thinks can't defend himself.

One evening just after dinner Anthony sees Luke taking sweets off Stephen. He loses it and jumps on Luke and tries to get the sweets back for Stephen. Anthony punches Luke hard in the stomach. Four members of staff arrive and pull the two boys apart. Anthony won't calm down and tries to get away. He is pulled onto the floor and held down by his arms and legs.

e) Paula - Vignette E

Paula is 14 and has been on the unit for about 7 weeks. She has been watching TV all evening and it is now 9.30pm and all of the young people have been told to go to bed. Paula refuses and says that she wants to watch the end of her programme and then she

will go to bed. The staff have told her that this isn't allowed, it's a school night and she has to be up at 7.30am the following morning. Paula says she won't go. All of the other young people start to move away and go to their own rooms as asked.

Paula is asked again to go to her room and again she refuses. She is told that if she won't go then two members of staff will escort her to her room and make her go to bed. She won't move and so two female members of staff get hold of her arms and pull her up off the settee and then drag her along the corridor and place her in her room. Paula struggles all the way and shouts and swears at the staff who are dragging her along.

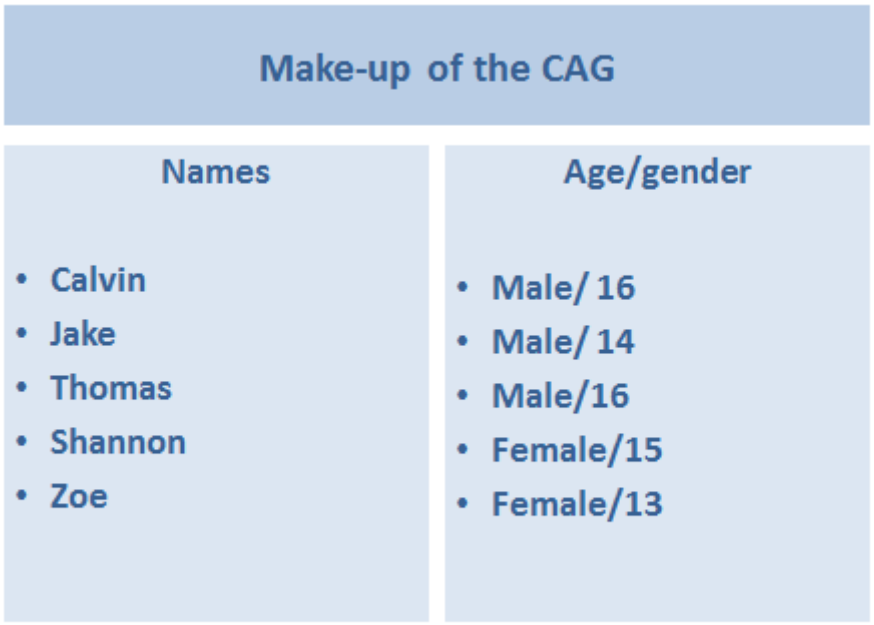
The Vignettes about Anthony and Lewis proved to be the ones we used more frequently as the CAG felt the issues were very real and that they highlighted situations that could easily happen elsewhere. Their concerns about who starts a fight and who, if anyone, should justly be punished were important. They also felt they could readily relate to children trying to stand up for one another and for someone with, for example, learning difficulties, should be protected by peers. Ensuring that members of the CAG were comfortable with the scenario and knew what to look out for when they were using them was an important element on the process.

4.23 Creating a balanced context

The role of the CAG was important in creating a sense of balance or reality in which the research was conducted. Creating a children's advisory group proved more complicated and difficult than I had anticipated and there were many times that I imagined it becoming impossible. My intention was to support a group of children to be involved as children and not necessarily because they had any prior knowledge or vested interest in the subject area. But the question of why would they want to be involved, raised its head, and, as the research findings were unlikely to have any direct impact on the

individuals within the CAG, it proved more complex to bring together a group that might remain committed throughout the process.

Diagram 10 - Make-up of the CAG



As none of the members of the CAG had been in custody (although one had an older sibling in prison at the time of the research) they had no previous experiences within the youth justice system. The CAG had some pre-conceived ideas about what the children in custody would be like. This ranged from thinking they would all be wearing prison uniforms, that they were unlikely to be able to read or write and that they had been locked up for very serious offences (rape, murder etc.). The CAG were anxious about entering custody, thought they might get searched, indeed one individual thought she might get strip searched. There were fears that the children inside might have weapons (tooth brushes chiselled into knives). Another fear was that those inside might resent them for being able to get out and go home, when they couldn't. The process of

'othering' (Goldson, 2009) was in play which both demonised the children in custody – they were dangerous - and also pathologised them – they were poor victims of bad parenting and poor living conditions. Children within the CAG appeared to buy into the argument that family dysfunction is a cause of offending and were, apparently, less persuaded by the existence of structural issues. However they did identify where you live as being an issue which demonstrated a degree understanding about inequality.

> *If you live in *** City and you get arrested you won't end up in jail but if you live on the *** estate and the Police pick you up the chances are you'll end up in side*.
>
> Calvin, aged 16

And they could also relate to issues about which family you came from so that if, for example, you have an uncle, a dad or a brother that has been in trouble with the Police you are more likely to get 'picked on'.

> *If they know you, know your family then they will probably think you're also involved or that you have done something even if you haven't. And once they know your face they will just keep hassling you.*
>
> Thomas, aged 16

In reality when they arrived, the thing that surprised them most, to begin with, was the fact that they had to relinquish their mobile phones. For all members of the group they were never without their phones at school, at college, or during the night they were constantly in touch and connected to everyone they knew and were important to them. Having to surrender them and leave them in lockers proved very challenging.

Keeping notes from the CAG meetings (see below) helped to shape the research and to guide my thinking about important issues and about the common ground that clearly

existed between the various groups of children. Meetings had to be conducted at a pace that was appropriate to the children involved and it was, at times like being on the set of Hollyoaks with so many conversations and different agendas taking place in one room.

Notes from CAG meeting 23.5.13 - Observations/comments from vignette pilot

Thought prisons didn't work & that young people who end up there often come out and do the same again

Should understand what young people's problems are and try to help instead of locking them up

1 young person has a brother aged 16/17 in custody at present and who had a cell mate hang himself last week so he has been moved somewhere else

Another young person also has an older brother in prison

Alternatives: teach young people how not to take things seriously i.e. when you are being called names/bullied etc.

Tell the bully that it's wrong & make sure there are consequences but also teach young people coping skills

Make sure there are enough staff on duty to talk to young people

Separate young people who are calling each other names i.e. take them off into separate rooms until they calm down

If people are in danger then it's OK to use physical force like if someone has a weapon

Putting young people together afterwards until they can resolve things (mediation)

Make sure you know who started something and deal with them as well

Not OK for an incident (Vignette A - Lewis) to take place in a school setting or (Vignette E - Anthony) for a parent to react this way

Vignette E -Anthony - yes it makes a difference what else is going on in their lives, you should know what they are going through so that you can a) understand better b) help.

Be flexible about bed times although if one person wants to stay up everyone will want to stay up

Put TV's in the bedrooms

Prisons like too soft, like a holiday camp

Young people when they behave badly at school get taken on trip to do mountain biking not the good kids

Discussed segregation, young people talked about isolation in schools how much they hated it and how pointless it is.

Discussed separating people on the basis of where they come from but agreed that, in the real world, people have to get on so it would be better for them to learn inside how to get on with people from different parts of the country etc.

If people are fighting over shower gels give them enough gel in the first place

4.24 Creating dialogue with children in custody – New Space

The involvement of the CAG in the New Space meetings also proved enlightening. Individuals from the CAG ran sessions with me in both the LASCH and the SCT using the Vignettes as a basis for a wider conversation about children's experiences in custody and specifically their experiences about the use of physical restraint. As well as the set

of questions associated with each of the Vignettes, the CAG had generated their own questions (see below).

The whole CAG group met with the children from the LASCH to ask these questions and then reflected on their pre-conceptions and what they had found in reality.

> *They're not that much different to us really, but I wouldn't like to have to stay there and not be allowed to see my family.*
>
> Zoe, aged 14 - CAG

Observations/questions from meeting in LASCH 2.9.13

- Do the staff like to restrain the kids?
- How would the staff feel if the kids restrained them?
- The young people wanted the place to be more strict.
- They only had a restricted number of items in their rooms
- They thought they should have had more items in their bedrooms
- Young people didn't want to be treated like children
- They weren't allowed their friends in their bedrooms
- Not allowed to speak to friends about feelings or emotions
- One of the girls cries herself to sleep
- Only allowed 2 phone calls a day to their family
- Have to spend their birthday locked up
- Have to live without all their addictions
- Not allowed a mobile phone

- How would the young people feel if they got to restrain the staff?
- Do you like your bedtime?
- If you could change anything what would it be?
- Who chooses the rules?
- If your child was in custody how would you feel about them being restrained?
- Young people want to go to their room to cool down
- What would you want to happen instead of restraint?
- Ask the staff how would you feel about strangers touching your child?

As part of the general discussion the children who were locked up talked, initially, about the LASCH being like living in Butlins Holiday Camp. There was a sense of bravado and they did not want the CAG to disapprove of them as individuals or to think they were soft or unable to cope with the regime inside. They talked about having TV's in their bedrooms, having a swimming pool and about getting takeaways on a Friday night. When we explored this in more detail however and looked at what time they had to get up in the morning, how many hours education they had to do every day, what time and for how long they were locked into their bedrooms every night, the fact that they could not have a mobile phone or access to Facebook, the limited contact with friends and family it began to look like much less like Butlins Holiday Camp.

The CAG were very shocked to discover that some of those locked up hadn't in fact committed a crime and that it was possible to be in custody without being a 'criminal'. They were puzzled at the idea of being locked up, which they clearly associated with punishment, for 'your own safety'.

So you can be locked up for self- harming, that's just not fair surely?

Thomas, aged 16 - CAG

You can get sent away, put inside when you haven't done anything wrong?

Jake, aged 15 - CAG

And the idea that the children who had been sent to LASCH were locked up with children who were 'criminals' (as they saw them) seemed, to them, to be very unfair. Whilst they could understand that sometimes children were at risk when in their own communities, particularly if they were at risk of sexual exploitation from older men or from self-harm by attempting to commit suicide, however they struggled with the idea that these behaviours would result in the same punishments as those who had committed assaults, burglaries or other serious crimes.

But what if they are in the same place as someone who has raped someone? That would just be wrong wouldn't it?

Jake, aged 15 - CAG

There should be separate places for welfare at DTO's.

Bailey, aged 15

Other issues that the CAG wanted to pursue were the ideas of deterrence and rehabilitation. They expressed concerns that the regime inside was too easy and that it would not, therefore, act as a deterrent in the future.

When you get out do you think you will ever get sent back inside? Will it stop you doing the same thing again?

Shannon, aged 16 - CAG member

For most of the children the answer was usually pessimistic. Many had not seen the idea of custody as having been any sort of deterrent. When working with the groups of children as part of the scoping work at the start of this study issues around the minimum age of criminal responsibility, age at which you could be arrested, what sorts of behaviour could/would be seen as criminal behaviour and when and for what you could be locked up, were largely unknown to children. It is only once they are already involved in the youth justice arena that children begin to have a better knowledge and understanding about the system. There is, I would argue, very little evidence from these accounts that the threat of being locked up serves as a deterrent and there is as little evidence that being incarcerated prevents further offending.

The CAG wanted to ask the following question: ***Do you feel you have learned from your mistakes and do you think you can be trusted to be released and not reoffend?*** The following answers were given:

> *I've got a lot on me plate when I get out so I'll get into trouble when I get out.*
>
> Natasha, aged 16, LASCH
>
> *They don't help you with drug problems in here so you go straight back to them.*
>
> Alex, aged 16, LASCH

Once again the CAG was baffled by the pointlessness of locking children up if it didn't either teach children a lesson or help them to stop re-offending.

The meetings between the CAG and children in custody helped them to stop seeing the child as 'criminal' from being the 'other'.

4.25 Creating alternatives

An issue that is, in my opinion, missing from previous research reports, enquiry documents and inspections within the secure estate is that of alternatives. The use of physical force is a given. Whilst it is regarded by some as 'state sanctioned violence' (Goldson, 2009) or 'institutionalised abuse' (Medlicott, 2001) there are few calls for a complete ban in the same way that there is a campaign to ban smacking (Raise Your Hand Against Smacking, Council of Europe, 2008), and there is very little in the way of research that is investigating whether there are less violent and acceptable ways to manage challenging situations in the secure estate. At the current time there are plans in place to implement MMPR across YOI and STC which include the use of pain compliance techniques.

This lack of interest in or exploration of alternatives has also been reported in the field of psychiatric nursing.

> The negative physical and psychological effects of physical restraints combined with the lack of alternatives lead, in many cases, to a complex and ethically sensitive decision-making process.
>
> Goethals, 2012, p 1199

The same review also reported that the perspective of patients had not been sought in how they felt about the use of restraints.

The issue of clinical holding involving children in a medical setting appears to have found a way around the issue by involving parents. This paper investigates the ethical issues involved in clinical holding the authors observed that lack of a theoretical basis for doing so.

> There is little theoretical discussion or ethical reflection for children being held for clinical procedures and little reference to children's rights and agency.
>
> Bray, Snodin and Carter, 2014, p 6

The children involved in this research had plenty of ideas that could be used as the start of a conversation about finding alternatives as this feedback from children at the Agenda Day reveals.

> **Q. Do you think there's anything else they could do?**
>
> **A.** *Can't stop gambling or bullying so not sure how you can stop being restrained. Not sure you can stop restraint being used. If they're outside and refuse to come in, let them stay out in the cold, you could just leave them*.
>
> **A.** *It would be better having a no restraint policy.*
>
> **A.** *Could be improved with more activities and more spaces*.
>
> **A.** *It all goes on behind closed doors, shouldn't some of the staff say to you to calm down and talk to you instead of smashing you up.*

Evidence from the Vignettes also provided suggestions about alternative ways of dealing with challenging situations.

> *I think Lewis getting restrained under these circumstances isn't the best decision for the staff to make because it'll make him more angry and frustrated also the staff should try to help him through by talking him out of it or telling Lewis to ignore John.*
>
> Christian discussing Lewis - Vignette A

If it was a school – would try to separate you, put you in isolation. No such thing as isolation here. They can keep you on the house which just makes you worse.

Anthony discussing Lewis - Vignette A

The alternatives generated by various children throughout this study include the following:

- Providing more activities to relieve boredom
- Providing more physical activities that could relieve pent up energy
    - Boxing
    - Punch bags
    - More football
    - Longer gym session
- Having more social time together with their peers
- Creating additional spaces that could be used to chill out in or to have private time away from other children or specific children
- Having more one to one time with staff
- Being allowed to let off steam by pacing, swearing, banging without this being seen as challenging behaviour
- Other children being allowed to intervene when one of their peers is getting upset
- Ensuring that the mechanisms for making complaints work quickly and efficiently so that issues don't build up and get out of hand
- Staff are expected to behave with respect and to treat children properly
- Children co-training with staff
- Having a no restraint policy

Children were asked to consider what other sanctions did work?

> **A.** *Zero tolerance, loss of phone calls, or banged up in your rooms. It depends, different for every young person.*
>
> Kelly, aged 15

Research Diary - Reflections on Myspace

We had a Myspace meeting today with 12 children present. Outside the window, in the yard a young man was circling around the buildings. He was being pursued by a male, senior member of staff who was walking slowly with him and talking to him. Two other male members of staff were standing close to one of the doors, arms folded, and waiting.

From time to time the young man would peer into a window and either gesticulate or shout at whoever was inside. He did not appear to be doing anything reckless, dangerous or be at risk in any way himself.

To begin with the children we were working with were interested but seemed unconcerned. 'He's had a bad day'. We understood this to mean that he has already been involved in incidents during the day which have resulted in the use of restraint. The young man approaches the window where we are working, gesticulates at us and the other children and draws on the glass with a small stone he has in his hand. 'They'll do him for criminal damage' one child says.

The three members of staff move closer. Eventually the young man goes and sits down on one of the seats in the yard. Two of the staff continue to stand together, arms folded, whilst the third person comes across to where the young man is sitting. He stands, arms folded, talking to the young man. He is clearly not happy and stands in a confrontational way, towering above the young man.

At this point the children in the room become interested, assuming there is going to be an incident and all stand at the window watching. No attempt to distract them or persuade them to come away from the window is successful and eventually we decide to finish the session early. When we leave the room the young man is still sitting in the yard with three members of staff standing close to him, waiting to react.

What would we have done, what could have been done differently? We are certain that this incident will have resulted in the use of physical restraint at some point. The staff all appeared to be waiting for it to happen. Why were three of them necessary? Why didn't one of them just sit down in the yard with him and wait for him to calm down, get bored, or do something that put him at risk in some way?? What does it mean for a child in custody to 'have a bad day'? So many questions. My colleague and I are certain that the scenario will result in the use of physical force and with the young man being charged with criminal damage. Perhaps the most worrying aspect for us was that this didn't appear to be out of the ordinary for any of the children or staff that we were with. It seemed to be an ordinary incident which might well have ended up in the use of restraint.

Is this a last resort? Had we missed the de-escalation……what happened next?

Diary entry 31.3.14

4.26 Summary

This chapter has described the process of the research and begins to explore some of the initial findings which are examined further in the next two Chapters.

Different parts of the process generated different forms of qualitative, empirical data. Some of the reflections from the CAG impacted on areas of questioning for the children

in custody, and contributed methodologically. An analysis of the contributions made both by children in custody and from the CAG added weight to the conclusions about the normalisation of violence. Evidence from children in custody generated empirical data about their experiences of custody and the use of restraint and enables some conclusions to be drawn about how and why physical restraint remains an everyday occurrence across the secure estate. An analysis of the methodology used, the CAG, the Vignettes and the creation of a research space enables us to reach conclusions about their use within this study and about whether in fact they promote rights- based children's research.

Chapters 5 and 6 therefore will explore the two separate elements of the research both of which were of equal importance. The use of physical restraint and the child led methodology.

Chapter 5

Exploring

Part I – Exploring physical restraint

5. Introduction

Part I of this chapter offers some detailed evidence generated from the exploration of physical restraint with children whilst in custody or within 6 months of their release. They talk about how and why it happens and also about where and when. They discuss whether they think it is justifiable or not and also about whether there are any alternatives. The findings are presented under the following headings:

- Experiences of restraint
- Gender issues
- Expectations

Having explored children's accounts of restraint in Part I, Part II of the chapter will explore the issue of rights in more detail. It will investigate how children understand their rights both explicitly and implicitly and suggest that there is a clear distinction between what is morally acceptable and legally justifiable.

Part II sets the scene for an analysis of the issues through the lens of a rights framework and set out the arguments for the conceptual tensions created by constructing children as *either* children *or* child offenders and not as rights bearing citizens.

Part III provides a brief account of some of the information that was gathered from other key contributors including members of staff from the various institutions (both front line and management) as well as NGO's, lawyers and activists. Whilst acknowledging that the research is primarily about children's experiences a small sample of adults were also interviewed and a brief account of this evidence will be provided in this section.

A synthesis of the research data presented within the context of existing knowledge in the field will then be discussed in detail in the final chapter.

5.1 Experiences of restraint

All of the children who took part in either: Vignettes, focus groups, New Space or one to one interviews had experienced or witnessed the use of physical restraint. Not all had been restrained themselves but they had all witnessed its use. Some children had been detained in all three different types of institution, others in both LASCH and STC and some just in LASCH. In all three settings children reported that physical restraint was used on a regular basis.

The Vignettes were used to explore issues around the use of physical restraint with children in LASCH, followed by those in STC and finally with a small number of children who had just been released from YOI. The CAG had developed a set of standard questions (set out in Chapter 4) however the scenarios were designed to support the dialogue between the researchers and the research participants. Supplementary questions and discussion around the issues were encouraged.

Whilst discussing their experiences of being restrained children often talked about things that had led up to the incident. On occasions this was situations outside of the

institution such as family issues, the outcomes of court proceedings or frustrations about social workers, YOT workers and so on. The scenarios that were used to inform Paula – (Vignette E) included such occasions.

> *I asked and asked for mobility so that I could go and visit my mum. I knew she was in hospital and they arranged so I could speak to her on the phone but that's not the same as seeing her, you know. So I asked my key worker and she said she would ask the social worker but that was nearly two weeks ago, and then I've heard nothing. And it's like they just don't give a shit. The social worker well you just can't get a hold of her.*
>
> *It makes me mad, stuck in here. I just don't know what's happening and they fob you off and say that they're trying so eventually you just lose it and take it out on someone.*
>
> Kelly, aged 15

During interviews and New/My Space meetings children told us that the behaviour which most frequently resulted in the use of restraint was fighting between children in custody. Fighting was often a result of conflict between children from different parts of the country. Neil, aged 18, had just been released from YOI when I spoke to him in December 2013. He had friends who had been in custody so the use of restraint did not come as a shock to him when he first arrived.

During the interview Neil told me that….

> *There's fights in any jails, not everyone's going to get along with everyone. All the north east boys versus the Huddersfield, Leeds, York. There's fighting against different regions.*

This view was repeated by several of the children I spoke to such as John, aged 16 who had just been released from STC. During one to one interviews we were discussing the fact that fights happen frequently in secure establishments, and trying to identify the causes.

Q What starts the fights?

A *It depends where you are from, like if you're from a different area then things can kick off like scousers or all of us are from Durham or from Newcastle and then people don't get on, don't mix.*

It's mainly about the area you're from like a geography thing. It's OK sometimes 'cos you know the staff, know where they're from and you know the same people they know.

John, aged 16

In addition to fights caused by territoriality fighting was seen, by some, as normal behaviour, particularly between boys. One of the girls we spoke to in the STC, Vicky, observed that the boys often fight with each other but, she felt, it wasn't real fighting it was just what she described as 'boys being boys'. This gendered behaviour was accepted as a norm within the institutions in the same way that the girls behaviour was seen to be less physically violent but more about verbal aggression, bullying and tormenting.

A common perception appeared to be that the boys get their differences out into the open and resolve them by resorting to physical fighting, whilst the girls take their time to resolve differences with each other but are perceived to 'brood and angst' about their differences in a less physical but more emotionally abusive way;

People are fighting cos' they're just being boys.

Vicky, aged 17, STC

There are clearly some very complex issues involved here including gender stereotyping and assumptions about what constitutes 'normal' behaviour amongst male and female children. The concept of hegemonic masculinity (Connell & Messerschmidt, 2005) may be useful, albeit that it has its critics. Criminal behaviour, and also violent behaviour, is seen as a resource for 'masculine validation' (Ray, 2011). Ray puts forward a suggestion that hegemonic masculinity may be useful in explaining some male behaviour and for the active process of 'doing gender'. What it fails to do, of course, is to account for crime and violence perpetrated by women. It is however useful to acknowledge the complexities and to consider how and in what ways gender, masculinities and the politics of identity impact on the way that children's behaviour in custody is understood.

In addition to fighting the use of restraint was also reported for a variety of other reasons. Sometimes as a result of the children being bored, frustrated or of just wanting to let off steam. There were also occasions when some children deliberately 'kicked off' because they enjoyed the physical nature of restraint, it gave them an opportunity to vent excess energy and to express their pent up frustrations or that they just enjoyed the physical contact. On more than one occasion children described feeling physically charged and full of excess energy that they had no outlet for. They described sometimes deliberately instigating a situation in which would ultimately result in a restraint or alternatively provoking a fight with another child as a way of letting off steam. There is something about the physicality of restraint that children recognise.

You just get really wired in here. You're away from your mates and you just got too much time to think. You can only do weights for half an hour, we asked for hour sessions but there's not enough staff qualified so you can only do half an hour so that's not enough really to let off steam. You need to get rid of it somehow and well, it just starts back on the unit when someone has a pop at you. You just have a go back and that's how it all kicks off.

Bailey, aged 15

The children who spoke during the New Space sessions were angry at times. This was sometimes directed at others such as their YOT workers, solicitors, parents, friends or partners. Sometimes it was self- directed and they felt angry with themselves for getting into trouble or for letting people down. Often the anger was directed at the institution they were living in and this was expressed against individual members of staff or at the system in general. Frequently the children expressed anger and frustration about the way they were treated and the ineffectiveness of making complaints (discussed below) combined with an acceptance that, in custody, life is sometimes difficult.

The situation described by Amber (Vignette C) was a classic case of the frustrations experienced by children in custody when they are dependent on other people, usually members of staff, to obtain something as simple as new make-up. Amber was left feeling that she wasn't being taken seriously, that she was deliberately being made to wait. In STC Amy described a similar situation in which, she felt, she was set up by staff who knew that by making her wait for her order she would eventually kick-off and that this would be seen as an unreasonable response.

*They knew that I had ordered it in plenty of time, they just **cannot** be bothered to try to get it. They make you wait just to wind you up and that. And then when you kick off it's your fault.*

Amy, aged 17

In fact, her response was entirely reasonable given that beneath all of this are her fears and insecurities about her relationship with her boyfriend who is due to visit her.

I just wanted him to see me lookin' good, you know. I haven't seen him since I been in here. And you put on weight when you get stuck in here. Yeah the food is crap and you can't do exercise so all of us girls put on weight. So I just want the proper make up, it's just not that difficult is it?

Amy, aged 17

This sense of frustration at not being in control of some of the basic parts of their lives (access to toiletries or make-up) and at not being listened to or taken seriously by staff created tensions that easily spiralled into children 'kicking off' and being restrained as a result. Children described the experience of restraint as frequently making them angrier than before. This is also reported in research carried out by the Children's Rights Director (2004).

Restraint almost always makes you feel more worked up than you were before.

Morgan, 2004, p15

Children perceived, at times, that they were being set up by members of staff in order to be able to justify the use of restraint. Children in several interviews claimed that members of staff had intentionally wound them up either individually or had created a situation between the children in which there was likely to be conflict and, therefore,

the use of restraint would ultimately become, in their eyes, necessary and justifiable. Both Kelly and Gary, during their interviews, described situations in which this had happened;

> *They don't do it straight away, they'll try to make you bite say something about your family to wind you up so you kick off then they restrain you.*
>
> Kelly, aged 15

> *They will put you in education with a lad that they know you've got a problem with, or where you've been in a fight and then the lad will say something and you say something and then it all kicks off.*
>
> Gary, aged 16

Ricky had been released from custody having served several periods in both LASCH and STC. He has been in and out of secure accommodation from the age of 14.

> **Q What sort of behaviour can end up in the use of restraint?**
>
> **A** *Other staff are not bothered, they're sly. If you do a favour for them they'll do a favour for you. If you get on with the staff, the staff will like open the door & let someone out in the open area that they don't like so they get beaten up. If they don't like you, you get set up. You get into trouble.*
>
> Ricky, aged 17

A similar picture was also described by Ian, aged 18, who has been in two different STC's and also in YOI. He had just been released having spent many extended periods in custody as a result of committing violent assaults.

A *Sometimes it's that staff ask you to go and do a lad over, for being cheeky or something or in return for something that happened during the day they will ask you to do something at the end of the day.*

They will give it a couple of days to die down and then ask you to do the lad over. And they'll turn a blind eye.

Ian, aged 18

This suggestion was made more than once and in relation to different secure settings and was considered 'not inconceivable' by one senior member of staff that was interviewed.

One member of staff described a lad who had been placed in secure care for a considerable period of time. He was a 'big lad' and worked out regularly in the gym. The officer suggested that rather than be in conflict with this child you would want him 'on your side'. The suggestion being that he would be a lot of trouble if he wanted to be and that, therefore, it was better to keep him on side and not to cause any trouble with him. He was given a great deal of freedom on the unit and often did favours for the staff. In return he would get treats brought in by the staff or they would 'look the other way' rather than intervene if there were problems. This gave him a great deal of power compared to other children in the same institution.

On occasions the use of restraint was related to self- harm and was deemed to be a protective measure as described by Kelly whilst in the LASCH.

It happens if someone harms themselves, they take everything out of your room if you harm yourself and you're on constant watch looking through your cell door.

Kelly, aged 15

However Neil also commented on how restraint was sometimes used by the staff to retaliate against what was considered to be unacceptable behaviour (such as racism), but this was sometimes done without being a direct response to a specific incident and was, therefore, carried out behind closed doors. This is what Neil described during his interviews:

> *If you're racist to a screw, loads of screws kick you in. They get you, drag you off the exercise yard and take you up to your pad 'cos there's no CCTV in there so that can hit you and punch you in the stomach and get away with it in your pad.*
>
> Neil, aged 18

During discussions around the Vignettes children were asked to describe what actually happened when people kick off?

> **A.** *They chuck you on the ground and try to put your arms up your back. Then they knee you in the ribs or dig you in the ribs if they don't like you. You're held until you calm down or if you don't calm down they carry you to your room and put you in your room until you calm down.*
>
> *They bang your head off the floor that's why people have scabs on their chin and noses and bust lips.*
>
> Ian, aged 18
>
> **A.** *They grab hold of you or they sometimes just put you in your room.*
>
> *If someone hits you, you can hit them back in self- defence so you won't get restrained for that. So the staff will know if someone hit you first, there are cameras everywhere and they can checkout who hit who first.*

They grab you by the arm or grab your clothing if they can then they put you on the floor or sometimes they use handcuffs for a few seconds and then put you in your room.

Bailey, aged 15

Neil, aged 18, had just been released from STC where he had served 5 months of a 12 month sentence. This was his first time in custody.

A. *Using restraint, well you shouldn't be able to do that but it's just one of them things. Obviously if two people are fighting they have to break them up but it's the way they do it. There's no need for four people to jump on you and hold your head down, smash your head off the floor and there's blood everywhere and they hold you down.*

50 screws come running onto the wing and that's why they get hit, the way that when people get twisted up it's shocking.

Neil, aged 18

I don't think the Police and the criminal justice system is fair to children at all. I don't think they should be able to come to your house when you're at a young age and pick you up and put you in a cell. Then you get locked up with other people who've been in trouble. You're not going to get better you're going to get worse. The first time I was locked up I was 14 and since then it's been non- stop and now I'll be 18 in two weeks. I've done about 32 months all together. I've been locked up on seven different occasions. Prisons aren't that bad. Inside they can be a bit scruffy and that and the staff can be a bit funny with you. They're not that bad. The only bad thing is that if the staff don't like you and you get involved in an incident then

they might not treat you the same. Say if you got put on report, say if you're put before the Governor for fighting or something like that, then the staff can give you a bad report. And even if it's a load of lies and there you are you might get double the punishment.

They've got advocacies like Barnardos and that but they're not in control of the prison, so if the prison doesn't want them to find out the truth then they won't. When you're involved with the Police and prisons I'd show them what I've seen myself. It might give them a real eye-opener what it's really like and the things that's kept hidden from them. If they really cared about kids' rights and that if they'd seen some of the stuff that goes on they'd have to do something because some of the stuff just isn't right.

Ian, aged 18, when released from YOI

Ian goes on to describe how he has seen prison staff picking on particular children and about how they create favourites who then do some of their 'dirty work' for them.

*You can get restrained for fighting, shouting at staff, swearing, breaking stuff, getting in their face. It happens a few times a day somewhere like *** YOI maybe 10 times a day is normal.*

Do people get hurt? Yes sometimes I've seen people get their wrists broke. I've seen it happen In STC they use PCC and in YOI it's C&R which is pain compliant.

*STC *** staff are scared to do anything, worried about themselves getting hurt, I threw TV's and all sorts but they wouldn't get involved.*

They don't report, don't report it to court. It's a private company so they get fined on safety grounds if they report any issues.

*PCC doesn't hurt, it stops you lashing out, you only get hurt if you struggle and then it's your fault. In *** YOI they cause pain to you and they can use it to stop disorder to maintain order not just for safety. That's fair enough in a men's jail.*

They shouldn't be allowed to cause pain to a child to someone under 18, it will just make you more angry.

*Some staff make you want to retaliate, call you by your second name and you have to call them sir not friendly and they make you want to hit out in *** YOI but it's not like that in *** STC. They treat you OK in *** STC call you by your first name and you can call them.*

Ian, aged 18, when released from YOI

Ian's analysis is complex. On the one hand there is very little indication that he is aware that children have legal or formal rights to be treated in any other way. However he clearly feels that some of the things that have happened aren't acceptable, aren't right. The distinction he makes between an adult and a child, under- 18, is significant. He suggests that causing pain to a child under 18 shouldn't be allowed but this is not an issue about their rights but that it will make a child 'more angry'. He appears to make a distinction between YOI, which he describes as a 'men's jail' and STC. He can see that locking up a child with other people who have also been in trouble is likely to make things worse and not better.

Ian also makes a link between how children are treated and their behaviour. So, issues such as being called by your first name and not having to call the staff 'sir' is important. Furthermore he can see that the staff exacerbate situations by making you call them sir, or 'if they don't like you'. Ian has a sophisticated understanding about the position of

private companies who run the STC provision and about their reluctance to report issues to the YJB. The role of advocates and the complaints process do not appear to offer any recourse to resolving children's grievances. As with many of the children that were interviewed Ian is very well informed about the differences between the various techniques that are in use in the different institutions, PCC C&R, and about the use of pain inducing techniques. Ian's observation that restraint happening 'ten times a day 'for fighting, swearing at staff' and so on is normal, lies at the heart of this research.

The way that some of these scenarios were described suggested that children didn't necessarily disagree with the use of restraint but they did sometimes feel it had been heavy handed or that too many people had become involved. Even when describing quite horrific scenes there was an air of acceptability, and predictability about it. Although sometimes children described being shocked at what they had seen, or having felt violated as a result of having been restrained they were often left feeling that somehow they deserved it.

As researchers we tried to identify when situations were most likely to occur and whether there was any pattern to this. There were several common scenarios that were described. One example occurred when children are required to go to bed at the agreed time (this may be 9.30pm). It is not acceptable to use force to *make* children go to bed. However there are shift patterns and staff time to take into consideration and it was reported as common practice for children to react badly to being told they have to go to bed, and then staff winding them up until they are seen to be posing a risk to themselves or the staff in which case the use of force can be justified. This evidence is drawn from interviews as well as New Space meetings and is described below:

Q When is restraint used?

A *Silly things like not going to bed, can't do it just for refusing to go to bed so wait until a kid is swearing or spitting & kicking off not just for refusing to go to bed.*

Bailey, aged 15

Q Are there times when children kick off more than others?

A *Lock down is at 9.30pm, you are up at 8am and then in education by 8.45am. Some people just refuse to go to their rooms at lockdown then they might get restrained. Or if they don't clean up if they've got a messy room.*

Kelly, aged 15

There was also evidence that restraint occurred in specific areas including corridors, stairwells and bedrooms where there is no CCTV. Children reported feeling that this was sometimes of their doing, but that also these locations were sometimes intentionally chosen by members of staff. Staff making use of these unobserved spaces was considered unjust. It was, therefore, often the where and how rather than the fact that restraint happened at all which appeared to cause some resentment.

Children reported that they will sometimes manipulate situations in which they want to retaliate against a child for some previous altercation but they want staff to intervene so that the situation does not get out of hand. They will, therefore, purposely provoke a fight when there are sufficient numbers of staff around to intervene quickly. This safety net may be a ploy to get the other child into trouble for fighting but is often a way of children sorting out conflicts without anyone getting hurt. It may also be part of the sub-cultural processes that children experience when they are institutionalised (see Bengtsson, 2012).

During a discussion during New Space meetings the following emerged:

> **A** *Young people will threaten verbals when there are enough staff around to jump in if things kick off.*
>
> *They're not stupid.*
>
> *Makes them look big and retain their credibility without losing face but won't actually end up in a fight because staff will intervene.*
>
> Group discussion
>
> **A** *In STC staff would restrain you but I never had a complaint in there not about none of them. It's more childish in there than in YOI, it's rougher more grown up. Plus there's loads more people in there so there's more fighting. Never been restrained in there. It's more grown up and more serious, they don't use locks and stuff in STC not like in YOI.*
>
> Ian, aged 18

Other situations which result in the use of restraint include incidents of self- harm where the staff intervene to prevent a child from injuring themselves, and also issues around bullying. In this research, evidence from children about self- harm was rare and very few of the children raised this as an issue or reported being involved in self harming behaviours. In comparison with other establishments where the incidence of self- harm is high this seems unusual. This may have been under reported within this research or may be associated with increased measures to detect and prevent self-harming behaviour. It is beyond the scope of this study to investigate the issue any further and, therefore, any further comment would be pure speculation.

Bullying, however, was frequent and the aftermath often resulted in fighting or victimisation which regularly resulted in the use of restraint. Bullying was most often associated with the internal economy of shower gels and sweets, and with gambling. Individual interviews revealed the following evidence:

Q Is there bullying?

A *Some people are victimised. Shower gel inside is like money. You can lose your shower gel if you don't fight, someone will take it off you or you can get someone to hit someone for you if you give them shower gel.*

You can order tuck and you can earn points and use your points to get tuck, you can also get bullied and get your tuck taken off you.

People aren't supposed to gamble but they do.

John, aged 16

Q What about for people who want to harm themselves?

A *You get watched if you're at risk of harm. You can get watched every 2 minutes then every 5 minutes then every 10 minutes.*

Kelly, aged 15

Not all children felt that restraint was a negative thing to be involved in. As well as reports that some found it funny or entertaining to watch, a small minority also reported getting some sort of enjoyment out of it.

I like getting restrained, get frustrated and it lets off steam, it's good to shout and fight staff.

Craig, aged 16

Craig's narrative around the use of restraint is interesting and, in this study, it was unusual. His perspective is complex and other factors must be acknowledged. The existence of an element of bravado, of hegemonic masculinity (Connell & Messerschmidt, 2005) and the existence of subcultural issues involved in learning how to fit into life in a secure unit (see Bengtsson, 2012) may also have had an effect. It is possible that some of the boys construct masculine identities, in Bengtsson's example 'gangster' identities, in order to cope with custody.

> A number of studies have uncovered how young people in institutions form their own subcultures in response to the dominant culture represented by staff and treatment programmes, and how subcultures constitute a functional response to institutionalisation, especially imprisonment.
>
> Bengtsson, 2012, p 680

However, for many children they reported finding their experiences of restraint as upsetting, humiliating, frightening, and painful and that it often left them feeling more angry and upset than they had been before.

5.2 Gender issues involved in the use of restraint

At the outset the research was not designed to explore the gender issues involved in the use of physical restraint in custody. However gender issues (particularly issues for girls) were raised frequently by children who were or had recently been in custody and, when asked, staff members also expressed some interesting views which are explored in a later section.

Gender issues have been raised in previous research including:

> Some (young people) thought that men should not usually restrain girls, and one thought that a woman should not usually restrain a boy.
>
> Morgan, 2012, p 17

Issues around race, gender, sexual orientation, disability or faith have been the focus of attention elsewhere within the youth justice and custody arena. There is evidence of discrimination and differential treatment within the youth justice field on all of these counts.

> Violence and incarceration are racialised, gendered and 'aged', mirroring and extending the painful and burdensome legacies of slavery and colonisation, along with the myriad of intersecting oppressions of patriarchy and adultism including sexual coercion.
>
> McCulloch & Scraton, 2009, p 15

However gender issues were raised by children during the research and, therefore, it is important to reflect on the issues raised. Vicky attended New Space meetings and was vocal about the tensions created on the individual houses that were, in her opinion, gender based.

> *I prefer to be on a mixed house, with the lads. The girls just get on each other's nerves and then there's all that bitchy stuff and sneaking around. And it ends up in fights. When there's lads around it's not like that, the girls will tend to get on better with the lads.*
>
> Vicky, aged 17

Evidence has been emerging for some considerable time about the difference in the way that welfare and justice agencies respond to 'troublesome girls' as opposed to 'troubled

boys'. Girls have been drawn into custody as much for their own, perceived, safety than for their involvement in offending behaviour (See Sharpe, 2009). At the core of this lies an explicit concern about their involvement in overtly sexualised behaviour. Female delinquency is commonly associated with sexual delinquency.

> I present evidence….that services targeted at young people 'at risk of offending' are drawing girls who have not offended, but who are considered to be (sexually) vulnerable into the youth justice sphere by confusing welfare needs with criminogenic risk factors.
>
> Sharpe, 2009, p255

Adolescent girls are frequently locked up in LASCH through the Family Court for their own safety and protection. However there is also evidence that confusion between welfare and justice in relation to girls has frequently resulted in escalation within the youth justice system for less serious offences than boys.

The distinction between children placed on welfare grounds (known inside as Section 25's) and those who are either on remand or serving a sentence surfaces for children themselves.

> *Section 25's shouldn't have to do interventions. If they haven't got a drug problem why should they have to do that in interventions, it's not fair. And they should be able to go to bed later and not get restrained 'cos they haven't done anything wrong so they should be treat differently.*
>
> Dean, aged 17

Mostly the girls that are here are section 25's there's only one or two that are here through the courts and that. But then they have to do the same education, the same rules it's I suppose no not really fair.

Craig, aged 16

Sharpe (2009) provides evidence of what she describes as the 'protective-punitive confluence' which has resulted in the increased criminalisation of 'troublesome girls' in contemporary Britain (2009, p 266). Sharpe and Gelsthorpe (2009) discuss the following challenge;

..find ways of responding to girls' real needs without fuelling stereotypical ideas about female behaviour and without criminalising their welfare needs.

Sharpe & Gelsthorpe, 2009, p 201

The dominant discourse in criminology has always been male oriented and the invisibility of girls and women has been regarded by feminist writers as characteristic of their position in society and in the social sciences generally.

O'Neill, 2001, p 31

O'Neill (2001) conducted a piece of research to explore gender issues in secure care for children. She investigated issues around admission, use of isolation, use of physical restraint, and self-harm. She concludes that all of the children experienced secure accommodation as a punishment because of the emphasis on security and control and, for those who had been placed through the welfare route felt more punished and stigmatised. As the majority of those placed through this route were girls they felt that the high levels of control, surveillance and loss of privacy were a double punishment.

For those who had experienced sexual violence the use of physical restraint and being placed alongside sexual offenders was distressing.

This was an issue that the CAG struggled with. Both in terms of the fact that girls could be locked up when they have done nothing wrong, but also that they might end up being restrained by male staff.

> *That's a double punishment then really isn't it? If you get say abused by your uncle or your dad or someone and they lock you up. Well I just don't get that but, if you end up here (in LASCH) and then you get restrained you might be getting restrained off prison guards that are men. That's just not fair really.*
>
> Zoe, aged 14 from CAG

Research carried out in 2011 for the Office of the Children's Commissioner (Uservoice, 2011) reported a gender difference in the way that girls experienced the use of physical restraint compared to boys. Girls felt that the procedure impacted on the health and well-being whilst boys expressed feelings of anger along with an 'indifference and an acceptance' that it was a necessary part of the custodial regime. We will return to this 'acceptance'.

One female comment in the report speaks volumes:

> Men doing it to young girls?
>
> Uservoice, 2011, p 15

The proportionate use of physical restraint with girls is higher than for boys (YJB, 2014).The placement and care of girls in secure accommodation is a gendered issue.

Two of the children in LASCH commented on how rough the staff could be, at times, particularly with the girls.

Some staff are too rough they need to be told.

Especially men when they restrain girls and are proper rough with them.

Thomas & Michael, discussing Lewis (Vignette A)

Raising issues around gender during the exploration of the scenarios in the Vignettes led us to pursue these in greater depth during other sessions, such as during the New Space meetings or one to one interviews.

Q Does it make any difference if it is a female member of staff or a male member of staff?

A *If it's a female member of staff all the lads would pile in to sort of protect her.*

Dean, aged 17

A *A couple of the screws are all right, female staff are sometimes even worse than the male staff swearing at you and stuff, their attitude.*

Kelly, aged 15

A *Young people often defend the female staff and less likely to defend another young person, they would jump in to support staff if they were needing it.*

You learn respect for females in custody, will defend them.

Dean, aged 17

Q Do you see any difference between male staff and female staff?

A *Young people won't fight female members of staff*

Lads don't like it if they're restrained by female members of staff – lose face

Girls who have been sexually abused and being held by male staff, don't like being held on their backs

Group discussion

Describing children's behaviour in such gender specific ways is not uncommon in the youth justice system and the need for 'gender specific responses' is long overdue (Bateman & Hazel, 2014). O'Neill's (2001) gendered exploration of locked institutional care investigated some of the differences for females in background circumstances, admission routes and experiences within the secure estate. These issues will all have implications for how females are cared for and responses to their behaviour in custody. Issues around masculinity are also relevant as are issues associated with heterosexism. The experiences of lesbian, gay, bisexual and transgender individuals in children's custody is rarely addressed.

Evidence suggests that many girls who are in custody may have suffered from previous sexual abuse and or sexual exploitation (Lambie & Randell, 2013). Use of physical restraint for these children is, therefore, a sensitive matter. Several of the girls talked about their embarrassment and humiliation during restraints. One child described how, in her view, male staff deliberately dragged their arms across her breasts when she is being restrained.

The involvement of female staff in restraining boys was also mentioned, again during one to one interviews.

Sometimes you cause a fight, you're not bothered if it's male staff or female staff maybe lots of female staff touching you isn't all bad.

Stephen, aged 17

Yes women restrain as much as male staff it's not that different except you get people shouting at you 'you just got done in by a lass' if you get restrained by a woman.

Neil, aged 18, released from STC

Finally an issue that was expressed by some of those during the New Space meetings and during interviews was sexual frustration. There was little exploration of this partly because I was aware that there were individuals within the group whose offences were of a sexual nature and it was not, therefore, appropriate to investigate the issue any further within group settings.

There was some sexually explicit banter which was sometimes humorous, or sometimes aimed at us as researchers to check out boundary issues and see what they could get away with in terms of language and behaviour. I never address swearing or bad language but would always intervene if offensive (racist, sexist, homophobic) language was used. Equally when children expressed their frustration or talked about how unnatural they felt the environment was this was discussed openly. In some institutions there are all male and all female units and in others it is mixed. There are pros and cons for each. During two of the interviews and several of the group sessions children spoke about sexual frustration which they linked with the need to 'let off steam' and to provoke the use of physical restraint.

One, who was gay, talked about the nonsense, as he saw it, of single sex swimming sessions.

We're not allowed to go swimming with the girls but I'm allowed to swim with the lads. How does that work?

Terry, aged 17

5.3 The importance of relationship

Children were clear that one of the things that did help whilst locked up was the good relationships that many of them had built up with individual members of staff. They could draw a distinction between staff that were 'alright' and staff that did not treat children well or did not respect them. The significance of this important, respectful relationship has been reported elsewhere (Larkins & Wainwright, 2014).

A very complex relationship exists between children who are locked up and their carers/captors. Several of the children talked about members of staff that would deliberately take things out on the children or who would exacerbate a situation in order to provoke individuals to 'kick off' so that they could intervene. Sometimes this was, it is alleged, as a means of retribution against a child who had in some way provoked that member of staff at an earlier time. If they had been sworn at, spat at or had been assaulted by an individual child they had been known to wait a few days for things to calm down and then provoke a situation so that they could restrain the child who had offended them. Indeed there were reports that in fact sometimes this same situation had occurred but an older and bigger/stronger child had been primed to 'take out' the offending child on behalf of the member of staff. One person claimed that he had been paid on occasions to take on a smaller or younger child as a 'favour' for a member of staff. When I asked if he had been paid with credits or points he replied that he had been paid in cash or with goods brought inside for him.

Another child felt that there were times when staff who were 'having a bad day' or for whom there were things happening at home and would take it out in the kids:

> *It's not OK just because you're in a bad mood or you're having a bad day, it's not OK to take it out on us kids. And yes you can see them sometimes just wanting to have a go.*
>
> Vicky, aged 17, STC

There were members of staff who had never been involved in a restraint and others who were seen to always be in the midst of it. It would be over simplistic, however, to suggest that it is as simple as some staff are willing to get involved and others aren't or that some staff are too eager to restrain whilst others are reluctant, or even that some staff are better at de-escalation techniques than others.

The use of restraint is a daily occurrence, which no longer appears to shock. During interviews I asked children to describe what they had been doing when a restraint was taking place. Frequently they describe sitting and watching TV, or carrying on in lessons while a restraint happened in the corridor or outside in the yard. During My/New Space meetings the children would all know if someone had been restrained earlier in the day. Children would discuss it but not appear shocked or have any sense of injustice it would be a description of what happened and who was involved;

> *Yeah he (Terry) isn't allowed to come to the meeting. He's in separation. He just walked out of education and then when they tried to stop him he lashed out at (***) and then they called 1st response and they all come piling in. He kept struggling so they were shouting at him to calm down but he didn't so they just kept him, down. Now he is in separation so he isn't coming tonight.*

John, aged 16

Justification for the use of restraint is made on legal and or procedural terms. This accounts for children's process rights but may violate their moral rights. The lack of conceptual clarity about children who are perceived to be vulnerable and or offenders but who are not perceived to be rights bearing citizens, I would argue, makes it easier to obfuscate their moral rights.

Q Are there any other reasons restraint is used?

A *If you refuse to go to bed. It pees them off & stops them going home.*

Kelly, aged 15

5.4 Expectations

All of the children who were in custody or had recently been released thought that, under some circumstances, the use of restraint was justifiable. Their explanation for this was often that a) it was part of their job b) they were trained to do it c) they were following procedures. Children were aware that there were circumstances in which physical restraint can be permitted and some situations in which it is not allowed. In addition to this children also verbalised their involvement and suggested that, in some way, they had 'brought it on themselves'. Generally this was in situations where children were fighting with each other. In such cases restraint was expected, even that it was the right thing for the staff to do.

It is important to note here that the issues of violence and use of restraint are firmly embedded in all aspects of the institutions where this study took place. On arrival children are given an information sheet to advise them about restraint procedures. Girls and female staff are not permitted to wear skirts or dresses so that their dignity is

(supposedly) protected in the event of a restraint taking place. Female staff who are pregnant are taken off the 'shop floor' and do not have direct access to the children in custody in case of violent incidents and finally there is CCTV in all of the communal areas so that incidents can be recorded. There is, from the outset, an inevitability of restraint being used.

Children appeared to accept that it is just part of what happens when you get locked up;

> *They are trained to do it 'At the end of the day they're just doing their job.*
>
> *Every time I've been restrained it's been my fault for fighting.*
>
> Group discussion with children in custody
>
> *Some people just love getting restrained, I don't know why just the buzz I think they get a buzz out of it.*
>
> Ian, aged 18

Children talked about their experience of being restrained in other establishments, both within the secure estate but also in residential care generally, and therefore were not surprised when they continued to be restrained in LASCH, STC or YOI.

However they also had a clear cut-off point for situations in which they did not feel that the use of restraint was warranted. This was where it was used when someone had, apparently, done nothing wrong, in situations where the wrong person was involved i.e. where staff were unaware of who had started an incident, or when the reaction from staff was deemed to be inappropriate to the level of risk that was posed and a feeling that staff overreact sometimes. In some cases, therefore, it was seen as unacceptable.

One poor kid I saw him and he hadn't done a thing wrong, he did absolutely nothing wrong. He got smacked onto the ground, had his glasses smashed.

You get restrained for anything inside, not sitting at the right seat at dinner, two screws get hold of you.

Neil, aged 18

One question that was asked whilst exploring the Vignettes proved to be a key question in understanding children's attitudes and expectations. When children were asked about situations that had resulted in the use of physical restraint in custody and then asked if the same situation had happened in a youth club, a school or a pupil referral unit whether the use of restraint would have been acceptable, they all felt that it was not acceptable. And, furthermore, they felt it wasn't acceptable because staff in those situations had not been trained to use restraint and, therefore, did not have the correct authority. Where the use of restraint could be legally justified and when the procedural requirements had been met (training, reporting etc.) it seems that children felt 'its' use to be acceptable. If it was being used in a way that was unlawful, or was not carried out correctly by properly trained staff then it was deemed to be inappropriate and wrong.

Q Would it be OK to use restraint somewhere else, like in the PRU?

A *In school/PRU….it's weird thinking about it like that, because no it wouldn't be alright to get restrained.*

Neil, aged18

In the PRU I didn't get restrained once in the PRU, they're teachers they're not trained. It's secure so it's OK to use restraint they're allowed.

Thomas, Vignette D - Anthony

Members of the CAG also reflected on the difference in setting and how the use of restraint in non-custodial settings was contrary to children's rights.

Not ok in a youth club because they have no right to do that in a youth club.

Shannon & Tommy, CAG

Some children described their experiences of custody as being better than they had been in either the PRU or with the Police and they were, therefore, less concerned about the issue of restraint.

Q Do you think that it's fair using restraint?

A *If you fight then they have to get in between you. If you fight on the street tho' there's no one to get involved so people get hurt, they can't wait for people to get hurt in here so they get in the middle and break it up.*

It hurts more when the coppers do it 'cos there's no cameras and no –one watching so they can do what they like.

I've seen them in the back of a van a young person in handcuffs and they're slamming his head off the floor up against the floor like on the street there's no cameras there and they will stick up for each other because there's only other Police to see it happen.

So it's better inside 'cos there's cameras to record what's happening and everyone is sat around watching.

In the PRU there's no cameras and they're not properly trained. You get restrained in there not for fighting just for shouting or carrying on or for trying to leave the

building. They put you in the 'time out' room and lock you in there, there's no visit from a doctor or a nurse. Restraint doesn't happen every day here.

John, aged 16

For children who had been in LASCH, STC and YOI such as Ian they were able to reflect on the differences in ethos and in the different use of restraint.

*Sometimes they all come from nowhere all with the shields and stuff, in riot gear. I've only seen it once. It was a shock when I first seen it. Yes in riot gear. In *** (YOI) I've seen them all with the full riot gear, they rush in from all the doors. Sometimes people get hurt. If you go to your cell then you're alright. In STC you can go to your room anytime but not in YOI so you are pretty much with everyone all the time and then things can kick off.*

Q How do they restrain you?

A *They grab your arms and lie you down and then put your face on the floor and then maybe one of them sits on top of you.*

Q How long for?

It depends if you struggle or not 'like if you wriggle around then it goes on longer. If you had any brains you wouldn't struggle. Not sure how long you are held down for maybe a few minutes. They both hold you down, but they are talking to you and trying to calm you down.

Ian, on release from YOI

It's funny to watch, it's something to do, exciting. It's funny watching people get restrained 'cos people try to struggle. They grab each arm and each leg and then

they position your head on the floor and hold you down there so you can't move so there's no point struggling 'cos you can't move but people do.

Sometimes people enjoy it. No they don't move you out of the way you can just watch it happen.

John, aged 16

Both staff and children become familiar with the language of custody and behaviour management. In LASCH the children talked about being involved in CIF's (Critical Incident Forms) and in both YOI and STC they talked about issues such as PCC (Physical Control in Care) and 'hands on' i.e. when staff are allowed to put hands on and when they are not, and about whether staff are 'badged' or not. This suggests that the issue has been de-personalised and is associated with procedures rather than people and practice. Children weren't even talking about the incident or the technique used to restrain but were talking about the paperwork that has to be completed once an incident has taken place.

You can get a 'Mixing Issue' form put on you and then you have to move.

John, aged 16

Young people have said that they have medical issues such as asthma and feel when they are being restrained it is not acknowledged after a restraint young people should have access to inhalers after a CIF as they may not be calm but feeling breathless.

At the end of the day we are all human beings and we all have issues some more than others, but every young person should be given time to reflect on things and calm down even if it is by pacing or swearing the staff seem to pull rank and use

their power as a team against us and it doesn't solve anything it is more aggravating than helpful. Just give us time because it could de-escalate a lot of CIFS.

Terry, aged 17

Children had a reasonable grasp of when and under what circumstances staff are permitted to use physical interventions and when they're not. For children like Mark, aged 17, who had been in all three secure establishments, he was able to compare the differences.

PCC doesn't hurt, it stops you lashing out, you only get hurt if you struggle and then it's your fault. In YOI they cause pain to you and they can use it to stop disorder and to maintain order not just for safety. That's fair enough it's a men's jail.

Mark, aged 17, STC

Although the children talked about alternatives this was largely ignored by the staff.

House staff need to give us space if we are distressed or angry and should not jump in to restraint straight away.

Terry, aged 17

The use of physical restraint is an everyday occurrence that is rarely seen as a last resort or seen as a failure to prevent situations from getting out of hand. For most of the children we spoke to they saw it as an inevitable, everyday feature of the locked environment. The YJB's own figures suggest that the use of physical restraint has actually increased and in 2011/12 there were 8,419 incidents of restraint up 17% on the previous year ((Ministry of Justice, 2013). There were on average 702 incidents involving 474 children every month. And, whilst the figures for 2012/2013 show a

reduction in the number of incidents there has actually been an increase per 100 children.

When asked the question would the use of physical restraint be justified if the same set of circumstances had occurred in a school, youth club or PRU (pupil referral unit) the answer from children was almost always 'of course not'. Children had therefore a nuanced understanding of the issues. Whilst at times they saw it as inevitable acceptable and justifiable there were also times when it was unfair and unjust.

We asked about whether you could keep your head down once locked up and just keep out of trouble, do as you're told and not get into any bother. Again this was seen as impossible, by children who were in or just released from custody. If you arrive at a new secure environment and are seen to be compliant you will get bullied, if you are seen to arrive and try to be 'top dog' you will get taught a lesson by whoever is 'top dog'.

> *He came in here trying to make out he was really hard and that, trying to be the boss. We was having none of that he was just trying it on, trying to be something he wasn't. So we just waited a couple of days and then we took him out, just to teach him that he wasn't that hard.*
>
> Mark, aged 17 during a group discussion

5.5 Futility of complaints

There is a link between the use of restraint and the perceived futility of the formal complaints and representations systems. Many examples were given by those interviewed of situations in which they had made complaints which were either not responded to or were not resolved quickly enough. Frustrations about not being listened to or not getting a reply often resulted in children feeling wound up and

annoyed and this resulted in them lashing out either verbally or sometimes physically. Part of the accepted inevitability of being locked up is that you are there to be punished (which was understood to be that you therefore have different rights in terms of how you are treated) and therefore it is pointless complaining about the way that you are treated.

Yes people do make complaints but there's no point. It takes 2 weeks to get sent down and 3-4 weeks to get back to you and then they say nothing can be done.

The complaints system is explained to you, but it's useless.

Kelly, aged 15

I put in load of complaints about the way you are treated the way the staff speak to you and swear at you but there's no point. The screws all stick together.

You write a letter of complaint and it goes to the deputy governor or the governor depending on how serious it is. Nothing ever happened to any of them. I put in loads of complaints. Nothing happened to any of them.

Someone I knew made a complaint about a screw you know for touching him, but it's not worth it they all just cover up for each other.

Neil, aged 18

Advocates yes they can do things about stuff on the outside, they are probably the best people to get stuff done, they can report stuff for you outside but they can't do anything about inside.

Vicky, aged 17, STC

Q Does anyone explain what your rights are about complaints and about advocates and how you should get treated?

A *There's Barnardos you can complain to them but nobody does in case you get talked about. Both staff and young people can talk about you.*

Making a complaint gets you into more trouble, more bother.

Ricky, aged 17

Whilst very few children had any confidence in the formal complaints system all of those who took part said that they had been given information when they were first locked up about the complaints process and about the availability of the advocacy service. However children viewed advocates as a source of help to resolve issues in the outside world (issues about family contact, their court cases, YOT workers etc.) but not about how they were being treated inside. Children also described the role of the nurse either during or immediately after a restraint had taken place, and also about the de-briefing process.

You get seen by a nurse but you don't want to show her, don't show anyone.

*At ***(STC) someone comes to see you to see if you are OK*

Mark, aged 17

You are always seen by a nurse within ½ an hour (in both STC & YOI)

Ian, aged 18

A review of the complaints system within the secures estate carried out by the YJB (2011) together with research carried out in 2012 for the Office of the Children's Commissioner made some clear recommendations about the need for a robust system

of complaints within secure establishments. This followed a series of criticisms of the previous system. This study suggests that criticisms remain for the children currently incarcerated and that, at times, frustrations about not being taken seriously or about slow progress in pursuing complaints led to children 'kicking off'.

Because the children involved in this study appeared to have accepted the use of restraint as a given and to have bought into the idea that as long as it was carried out within the correct procedures, there appears to be very little evidence of complaints being made specifically about restraint. Children's lack of awareness of, for example, their right to protection from all forms of violence (Article 19) combined with their everyday experience of violence appears to lead to a general acceptance that restraint is acceptable and even that it is in the child's best interest.

5.11 Rights agenda

The issue of rights is a complex one. Children within the CAG had some clear ideas about their rights and some notion that there were different types of rights:

> *Rights: personal rights, right to own opinion, right to own a car, to eat, education.*
>
> CAG discussion, February 2013

But, as with most children, they have almost no knowledge of the UNCRC, Human Rights Act etc. and what knowledge they did have appeared to be what they had heard parents say or heard in the media. Exploring rights with them was illuminating, particularly the thorny issue of rights for children in custody. They were very harsh and punitive to begin with and we worked hard together to unpick the difference between universal rights i.e. those that applied to everyone regardless of ability or circumstance and which are interrelated, interdependent and indivisible situated rights i.e. rights to a particular situation (when incarcerated etc.) and process rights which include the right to a fair trial, the right to legal advice etc. They were tied into the idea of rights and responsibilities and were also persuaded by the idea that children in custody somehow were entitled to different rights to other children. This was because they became offenders rather than children and that somehow this meant that they had reduced rights but also that they should expect to be treated less fairly or more harshly than children who were not offenders.

This distinction was most clearly articulated with the situation of children in LASCH who were incarcerated on welfare grounds (Section 25 of the Children Act, 1989) i.e. who had not broken the law and who had not 'done anything wrong'. The CAG struggled with the fact that these children could be placed in custody at all but also with the fact that once locked up they were placed alongside 'criminals' who had 'done something wrong'. Their struggle appeared to be about the just or acceptable reasons versus the unjust or unacceptable reasons for restricting someone's liberty. If a child has broken the law they should expect to be punished. Several times the old adage 'if you do the crime you pay the time' was aired by the CAG.

There was virtually no evidence of an explicit rights agenda within the secure institutions. However there was evidence of an acknowledgement to the existence of some rights. When asked about children's rights the staff almost always referred immediately to either Barnardos or NYAS (National Youth Advocacy Service) whichever the advocacy service was. Or they referred to the house meetings, student council meetings, complaints systems etc. They mistook the existence of ways for children to participate (i.e. their Article 12 participation rights), or to make complaints (process rights) as evidence that their service was a rights-based service. The right not to be treated in an inhumane or degrading manner or protection from all forms of violence (i.e. their human rights) did not appear to be acknowledged explicitly and was not understood by children other than their clear sense of being treated with respect and to be treated fairly.

It would be entirely wrong, however, to suggest that there is no acknowledgement of the issue of rights within the institutions. There is an acknowledgement of children's Article 12 (UNCRC) participation rights with the existence of student council, house

meetings, complaints systems etc. However there is no explicit recognition of rights issues such as their rights to protection from all forms of violence, protection from inhumane or degrading treatment (Articles 3 & 37 ECHR) and so on.

Children, however, had a very clear sense of injustice and talked explicitly about situations in which they felt they had been treated either fairly or unfairly, treated with respect or a lack of it or in which they felt they had been listened to. This, I would argue, is an implicit understanding of their rights.

For Ian, who has spent several long periods in custody, he felt that children under the age of 18 shouldn't experience pain in the hands of those who care for them, and that it is counterproductive in that it makes children more angry, and therefore, more likely to be challenging.

> *They shouldn't be allowed to cause pain to a child to someone under the age of 18, it will just make you more angry.*
>
> Ian, aged 18

One child who was in the STC took issue with the fact that he was in a secure institution run by a private company and, therefore, that it was unacceptable for a profit driven company to be given responsibility for caring/controlling children.

> *They shouldn't be allowed to make a profit by locking me up.*
>
> Kenneth, aged 16, STC

Children reported frequently being spoken to in ways that they felt was disrespectful or that staff took out their frustrations on them. They could describe in detail incidents in which a member of staff was having a bad day, had brought it into work with them and would take it out on the children during their shift.

They treat you like shit.

Dean, aged 17, in LASCH

You can tell if they're having a bad day and they are just looking to take it out on you. Even if you try to stay out of their way and keep your head down they are looking for an excuse to have a go.

Kelly, aged 15, in STC

The very idea of prisoners' rights and the concept of legal rights rather than moral rights have been de-railed by the current political unpopularity of human rights, specifically the perceived impact of the Human Rights Act in the UK. Garland (2001) asks:

> How could offenders have been so thoroughly deprived of their citizenship status and the rights that typically accompany it?
>
> Garland, 2001, p181

The debate about voting rights for prisoners has overshadowed the concerns about human rights abuses for prisoners. The notion that human rights for prisoners equals voting rights, has created a public and political outcry that has eclipsed concerns about the high rates of self-harm, suicide and restraint related deaths in custody. As McNulty et al. (2014) points out this has in fact very little to do with the human rights or citizen rights of prisoners and everything to do with politics, UK's membership of the EU and the British press.

Scott (2013) suggests that prisoners are in fact considered to have privileges and not to possess rights at all. He discusses the impact of the Human Rights Act 1998, and the role and influence of public opinion and the media, concluding:

> The law however, has overall proved to be a fairly blunt instrument regarding the protection of prisoners' rights.
>
> Scott, 2013, p 15

The important and welcome outcry created by the restrictions placed on prisoners receiving parcels issued by the Secretary of State for Justice (November, 2013) which resulted in severe restrictions on access to books in custody, and the order issued (June, 2014) by the same Minister that child offenders aged 15-17 should have their lights and televisions turned off by 10.30pm, continue to draw attention away from the real rights violations that are being carried out on a daily basis with children in custody. The use of violence against children in custody continues to be justified in numerous ways.

It is beyond the scope of this study to explore the extent of violence in childhood, but we do know that it is a way of life for some families and in some communities. Grimshaw (2011) provides three stories involving adults who were convicted of violent crimes as children who between them had grown up surrounded by trauma and violence including: abuse, neglect, domestic violence, bereavement and interrupted care. Whilst not condoning or excusing the crimes that they had committed the three stories are produced in order to try to gain a better understanding of the circumstances in which some children grow up and the impact it can have own their own relationships and behaviour. There is significant evidence (Justice Studio, 2014) that children, particularly the children who come to the attention of the authorities have experienced traumatic, chaotic and violent lives.

Diagram 11 – Children's exposure to violence

Evidence of experiencing violence	Statistics
Children as victims of crime: (British Crime Survey, 2013)	In England & Wales 762,000 crimes were experienced by children aged 10-15
	The most common offences were violence and assault (54%) and theft (43%)
Domestic abuse: (Women's Aid Federation of England)	In households where domestic abuse occurs 50% of children are also being directly abused by the same person.
	In families with children where domestic violence occurs 90% of children are in the same or next room during an incident
	75% of children on the 'at risk' register live in households where domestic violence occurs
Safeguarding and child protection: (NSPCC, 2014)	There were 50,732 children on child protection registers or subject to child protection plans in the UK in March 2013
Child homicide: (NSPCC, 2014)	On average, every week in England and Wales one child is killed at the hands of another person
	On average, in England and Wales one baby is killed every 20 days
Sexual exploitation: (Children's Commissioner for England, 2010-2011)	The Inquiry into Child Sexual Exploitation in Gangs and Groups identified 16,500 children as being at risk of child sexual exploitation
Use of Physical Restraint in Custody: (Ministry of Justice, 2013)	8,419 incidents 2011/12 An average of 702 incidents involving 474 children every month
Deaths in Custody: (Prison Reform Trust, 2014)	33 children between 1990-2014

Children have rights in law, as well as a moral right, to be protected from all forms of violence which should, I would argue, include violence whilst in the care of the state.

CRAE (2012) set out the legal standards on violence in custody in England (p 52 – 56).

> (a) No violence against children is justifiable; all violence against children is preventable
>
> (b) A child rights-based approach to child caregiving and protection requires a paradigm shift towards respecting and

> promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals rather than perceiving them primarily as "victims";
>
> CRC, 2011, p3

Children had an understanding and expectation about how they should be treated and to what they were entitled. Very rarely did they have a clear understanding of legal rights apart from some about some specific legal rights within the processing of the criminal justice system: the right to make a phone call, the right to see a solicitor, the right to make 'no comment' when interviewed etc.

Their sense of rights came from a moral outrage about, for example, the way they were treated or the ways in which they were spoken to.

> *They call you all sorts, call you a smack head. It's shocking what you get called in here.*
>
> Mark, aged 17, STC

Evidence from the Vignettes also suggested that the children had a strong sense of social justice, which I would argue comes from an understanding of their right to be treated fairly and with respect.

> *I think it is wrong that Anthony is getting restrained because he was sticking up for a friend.*
>
> Kelly, aged 15 (Anthony - Vignette D)
>
> *It shouldn't be allowed because they should let her watch the programme or turn the TV off.*
>
> Gary aged 16 (Paula - Vignette E)

I would suggest that children have a natural sense of their moral rights and that they may know something of their process and or legal rights. However they appear to accept that the use of physical restraint is being used lawfully, within reason and possibly even in their own 'best interests'.

Part III – Feedback from other stakeholders

5.21 Introduction

In the final part of this chapter I have presented a small sample of the feedback gathered from interviews with adults. As the whole research study focuses very specifically on the child's voice it may seem out of keeping. However it is important to place the child's view within a broader context which, I hope, is what follows in this section.

For staff, they were often equally disturbed and upset by the use of restraint and many described their reluctance to use it.

Q How do you feel about using physical restraint?

A *It is pretty frightening for staff and young people to be involved in restraint.*

Female member of staff from STC

Some young people enjoy the physical attention and try to provoke restraint.

When young people lose control they sometimes have no idea what is going on, they cannot control themselves.

If anything the staff wait too long to get involved and things get so far out of hand it takes much longer to manage.

Female member of staff from STC

It's horrible, you're rolling around on the floor, you're sweaty, they're sweaty you're breathing heavy, staff hate doing it.

Sometimes you can see the young people winding you up so that you have to restrain them.

We had a hands-off policy for a while and management told us just to stand-off but it didn't work it ended up with even more restraints 'cos things just got out of hand.

Staff group from STC

Most staff hate restraining people.

Male member of staff

Many of the staff that we spoke to also had ideas about how the use of restraint might be minimised and, frequently, the issue of space and the secure environment was raised. This included not having anywhere private and away from the general living areas on the units.

Young people often very distressed on the unit but can't display anger or upset and there's no space to go and talk to them. We're not allowed in their rooms, they can ask to come into the office but then it's obvious they are upset about something so there's no real space for them.

STC staff

5.22 Gender issues

Staff were asked questions about gender and acknowledged that it is recognised to be an issue. However it was unclear how these were being addressed, whether there might be benefits of using female staff to de-escalate challenging situations or when there might be a preference expressed by individual children.

Communications about gender issues sometimes happen but not always.

Female member of staff, LASCH

During interviews with the staff they also commented on some of the gender issues that they observed. The boys are perceived to get issues out into the open quickly and to use verbal or physical aggression to resolve their issues, usually by resorting to fighting. The girls were perceived to take longer to get issues out into the open and to dwell on things, use verbal aggression and insults, resort to bullying and, as a last resort end up fighting. The girls were described as being more difficult to manage and mixing issues were more prevalent amongst the girls than the boys.

Q Do the girls behave differently to the boys?

A *Lads use the gym or football to release tension, girls don't go and then they sit and stew over things.*

Staff group from LASCH

When members of staff were asked about gender issues there was often a less forthright response.

Don't really consider gender issues, we try to read the files to see if there are any issues but don't always get time. So it depends if you are the first person on the scene and then you just get stuck in.

Female member of staff from LASCH

Male staff don't intervene & pick things up. How it started isn't always why it happened eventually.

Female member of staff, from STC

It was acknowledged by some staff that there were gender differences. Sometimes this was about tone of voice. Several times members of staff mentioned that if a female tried talking to a child whilst they were being restrained it was possible for them to engage with the child and help them to regain control. They associated this with the softer tone of voice or, at times, just with it being a staff member known to and trusted by that individual child. Staff talked about the 'red mist' a state in which children just completely lost control and were no longer able to engage with or listen to anyone around them

> Red mist: A fit of extreme anger that temporarily clouds a person's judgement.
>
> Oxford English Dictionary

In this state, it seemed that use of physical force was a last resort as no other form of intervention was deemed appropriate to retrieve the situation. However several children were able to describe how they felt before they lost control and, at times, felt that they could predict the circumstances in which this might happen and that with the right support from either the staff or from other children they might be able to prevent it happening.

The current gender mix in both STC and LASCH is also acknowledged as an issue for staff.

> *We now get more girls from London and SE, lots of units being closed. Now they've shut all the girls YOI, so we keep them right up to age of 18.*
>
> *We're getting more older lads and much bigger lads now 13-18 and the average age is 16.*

Member of STC staff

5.23 It's all about the relationship stupid!

The importance of the relationship between children and staff was also acknowledged by the staff.

> *Rely on your relationship with the young person*
>
> *Young people do respect us*
>
> *There are occasionally young people who just don't care, but most do.*
>
> Staff group
>
> *I think we have really good relationships with the young people most of them know we are doing our best to help them and that we're here to help.*
>
> Staff member
>
> *Most of the staff don't want to impose restraint they do care about young people.*
>
> Staff member

5.24 Using restraint

Staff within the secure estate, when asked about what they thought was the most important part of their job stated that the children's safety was their main concern. This meant keeping them safe from each other rather than talking about 'containment and holding' in the same context as, for example, Steckley, (2010) who describes a more therapeutic form of physical intervention.

Many of the staff described the use of physical restraint as a last resort but also considered it a necessary part of the job. There was some acceptance of the idea that

there is the possibility of becoming anaesthetized or immune to the violence of restraint as it is a routine and daily occurrence.

Yeah we should still be shocked when it happens, but you just have to get on with it.

Member of staff

There were occasions, however, when participants expressed their own concerns about the use of custody and also about the way children are treated when they are in custody. A member of staff from the YOT expressed concerns about children when they first get locked up and was very clear about her determination not to become complacent or immune to the brutality of incarcerating children.

Young people are shocked when they get locked up.

It's a brutal process literally handcuffed in court and taken down to the cells and they don't get to say goodbye to their family, they are just taken away.

When I'm no longer shocked when young people get sent down then that's the point I need to move jobs.

Probation officer

There were six of them involved, she was lying in a foetal position but there were still six of them on top of her.

Member of staff

Several of the key stakeholders agreed that even if the legal criteria for the use of restraint had been met they still felt that it was morally wrong to use physical force with children whose liberty has already been restricted.

5.25 Rights

For staff and for other key stakeholders there was an acknowledgement that an explicit rights agenda does not really exist within the secure estate.

> *No real consideration of rights for young people or staff. There's a complaints box and an advocacy programme but that's about it.*
>
> Female member of staff

Evidence collected during this study suggests that currently rights for children in custody have become, as one respondent suggested, 'a bit of a dirty word'.

> *Rights just not very popular at the moment and a turn off to the public and funders as well as the government*
>
> *Most of the big vol. orgs have distanced themselves from an explicit 'rights' agenda because it puts people off. Have become part of the problem not part of the solution.*
>
> Interview with key stakeholder from NGO
>
> *These kids are violent, they are brought up with violence it's all they know. It's not an issue for them.*
>
> Lawyer
>
> *These children are violent, they grow up with violence they are abused and neglected and they expect violence. What rights are we talking here?*
>
> Academic
>
> *Prisons are bizarre, strange and twisted environments, children are cared for by people who don't understand or care. We do not understand the damage that abuse*

and neglect does long term. People cannot be expected to hold shit down and manage when they have lived with abuse and neglect and violence. These people are traumatised.

You take them to prison in a sweat van march them in, search them, take everything off them, then take their phones and contact away and take them to a cell. It's noisy and it's hot. It's clanging in there and too hot and they have no idea who else is in there someone they know, someone they owe money to or who has it in for them and it's a different environment in there, normal rules don't apply.

Children's rights lawyer

5.26 Summary

Evidence from children involved in this study indicates that the use of physical restraint is a commonplace, everyday occurrence. Whilst some discomfort exists for the staff involved they justify its use as being a protective one i.e. to ensure children's safety. Children appear to accept that because they are there to be punished that they should expect to be treated in a particular way and that the routine use of physical restraint is to be expected. Staff also believe that they are doing what is expected of them in order to keep children safe, although mainly from each other. This results in children and the staff accepting what are in reality regular rights violations that take place when restraint is used routinely, by arguing that it is both necessary and lawful. This generated consent legitimises the use of physical force as a normal and reasonable response to children's challenging behaviour by persuading both children and staff that the use of restraint is necessary in order to safeguard children either from themselves or from each other.

Children's understanding of the use of physical restraint is complex. There are some contingencies associated with its use and a relativist view about where, when, why and by whom restraint is used. When it was used for reasons that are permitted according to the law, or to policies and procedures children accepted its' use. When it was used excessively, unjustly or as a result of provocation by staff it was felt to be unacceptable.

Chapter 6 will now focus on the evidence that was generated about the methodology used in this study.

Chapter 6

Spaces for participatory research

6. Introduction

This research has been as much about the methodology as it has been about the subject under scrutiny. So, having delved in the last chapter into the research evidence that was generated about physical restraint I now want to focus specifically on the methodology and to reflect on what that has revealed. The importance of the child's voice and about what children contribute as researchers was a fundamental part of the research and I wanted to generate evidence about participatory research methods. This has been an important and innovative way of conducting research and one which also promotes a rights based approach to research.

Working from Beresford's (2003) conclusions about user involvement in research which suggests that the shorter the distance between direct experience and its interpretation, the more reliable and less distorted it is, I also acknowledge the pioneering work of Thomas and O'Kane (1998; 1999) with children in the public care system. They recognised the importance of making space within the research for children themselves to identify what was important and interesting (1999) and about giving children control within the research process.

> Our argument is that reliability and validity, and the ethical acceptability of research with children can be augmented by using an approach which gives

> children control over the research process and methods which are in tune with children's way of seeing and relating to their world.
>
> Thomas & O'Kane, 1998, p 336

Where and how the various elements of this research study have taken place and by whom were fundamentally important. The fact that the membership of the CAG was entirely voluntary, that it was never intended to be a closed group (although in practice it became so), and that the children were drawn from a number of different places was important. Members of the CAG brought different perspectives to each other as well as to me.

In addition to this the various research spaces that were used have been an important consideration and need to be reflected in this analysis. As Hill (2006) has demonstrated the context and setting in which research takes place is important.

> Evidence has shown that children are highly sensitive to the context in which research takes place.
>
> Hill, 2006, p 82

This research explored issues with children whilst in custody, as well as from children immediately after their release. There were some differences which are also important to reflect on in this chapter.

6.1 How participatory is participatory?

There have been constraints imposed on this as a piece of truly participatory research. The studentship (originally offered by De Montfort University) 'Participatory Practice Models in Youth Justice' created the broad outline for the study and within that I chose to focus on the rights agenda within the secure estate using some participatory

methods. The creation of a CAG was my idea as was the specific focus on the use of physical restraint and the use of Vignettes. So far not so participatory!

However there remained scope for children to shape and mould the work from then on, and importantly the research findings come from all of the children involved not just those who were, in the traditional sense, research participants. Chapter 4 outlined the key ways in which the research process was influenced directly by children. Creating the New Space within 2 of the 3 secure establishments provided opportunities to explore a whole range of issues that children face when incarcerated. Children were in control of this agenda, the pace of the conversations and what and how they wanted to participate.

There is no doubt that involving children as research partners throughout this study shines a different light on various issues and presents an entirely different perspective which could not have been achieved without them.

The New Space encouraged children to contribute who probably would not have agreed to be interviewed formally or to take part in the group discussions using the Vignettes. It also provided insights into the way children conceptualised rights, their attitudes to the use of physical restraint and to their experiences of violence generally. Children were placed in a different role within this space. They were not present as either child or child offender, not just as researcher or research participant but all of the children present took part in a different type of conversation. We were co-creators of an understanding about physical restraint but more broadly about the rights implications, the gender issues, the lack of alternatives, inevitability and so on.

What children have that adults don't is contemporaneous experience of being a child – experiencing the lack of power and voice, being subject to adult authority and recognising that things are not fair – they bring then a unique contribution to research.

6.2 Creating different research spaces

One of the spaces that we created was the shared space between children in custody and members of the CAG. The physical, actual place i.e. environment in which the research took place was significant and different institutions created different spaces. Whilst I was committed to the use of Vignettes to explore sensitive issues around the use of physical restraint it was very clear from the outset that the Vignettes themselves were of little interest to the CAG and, in practice, their main use was to generate a dialogue between the children in custody and the CAG about a whole range of other issues of more importance and significance. This shared space between children enabled a dialogue between them that would not have been possible if the CAG had not been present or if I had been the sole adult researcher. The issues that were discussed were of shared interest. Use of mobile phones was top of the list, followed by where people came from i.e. which part of the country.

The meetings with the CAG all took place either in a local community centre or at the offices of Investing in Children. They were, therefore, familiar, child-friendly environments that, importantly, were not school. It was important to continue to make the point that the group was entirely voluntary, that we were not looking for the brightest or the smartest children and that we were looking for a group that was interested and committed. Their track record in school or the community was not significant to us. Nor was any previous involvement with the Police or youth justice system.

Quite clearly the New Space meetings were more difficult to set up in a neutral, child-friendly space. In the LASCH we were given use of the common room which was in neither the education block nor the residential units but was a large room also used for assembly and presentation meetings. In the STC the meetings took place in either a training room or in the youth club, once again, in neither the education nor the residential facility. The meetings were completely voluntary and did not form any part of education or accredited programme of work.

Information about the New Space in the LASCH was delivered directly when I attended the weekly assembly in July 2013, and visiting all of the units/houses over lunch time periods to initiate support and make myself visible and also by placing information about the meetings in the weekly newsletter and on noticeboards. Participants were given information about the meetings and then could attend as many or as few as they wanted. They were able to choose to leave at any point during the meetings. In some cases staff had already decided who was able to attend the meetings and some children were prevented from attending because of previous mixing issues (i.e. where there was existing evidence of conflict or risk) or if someone was having a 'bad day'. We did become concerned at the extent to which attendance at the meetings was being gate kept by staff and about those who were attending having been hand- picked by staff because they were seen as less challenging and less problematic. This was continually challenged and negotiated with the staff at each institution.

The New Space meetings were facilitated with a colleague from Investing in Children who is a qualified youth worker and has many years of experience of working with children. He has a natural talent with those children who are often regarded as 'difficult and challenging', as well as a passionate commitment to human rights. Having total

confidence in my co-worker was crucial. We had discussed at length our roles within the meetings and had a shared understanding of this as well as of the additional element of my research around the use of physical restraint.

In the LASCH members of staff remained outside the room and (apart from 2 occasions) did not enter the room until the meeting was over. The two occasions when staff intervened were very different. On one occasion there was a verbal altercation between two of the children during the New Space meeting. A verbal insult was made and both children reacted, one by standing up and swearing at the other. Staff immediately came into the room and the younger, smaller boy was removed from the room. He was from a traveller background and there had been some previous verbal bullying and conflict between him and other children. My co-worker and I felt that this was an over- reaction and that there was time and space to allow the children involved to sort out the conflict between them without the need for adult intervention. However, we did not have any prior knowledge of the children involved or any knowledge of previous conflict and arguably, were therefore, not in a position to make an informed judgement about intervening. It seemed excessive to us.

On the second occasion we had a large group of children at the meeting and the whole group had been noisy and unsettled from the outset spilling jugs of water, kicking tables over and so on. Staff had hovered outside the door for some time and did come into the room twice to check that everything was OK. They did this in a relaxed and supportive way and agreed with us that the group was just being silly rather than that they were doing anything unreasonable or dangerous. Eventually a couple of the group members asked to go back to their rooms and we were able to proceed with the meeting.

In the STC the initial meetings were attended by one member of staff who was an activity organiser and was not, therefore, either a member of either residential or education staff. For the later meetings he was available but not present during the meetings. It is important to note, however that he was 'badged' i.e. he had the training and authority to use physical restraint when and if the need arose. This distinction is important and significant to children and they view badged staff in a different way because they are aware that only badged staff members can intervene.

For the remaining interviews that were carried out with children who had been released from custody these all took place in either the YOT offices (although in a private office) or at a workshop which was part of the community sentencing facilities. The information that had been provided for research participants (see Appendix) stated clearly that interviews could take place at any venue chosen by the individual. In reality these were initially gate-kept by the YOT and took place in formal, un- child-friendly office spaces or workshops.

Further interviews followed with three of these children. I conducted these on a one to one basis at a neutral venue chosen by the individual. In this space, not surprisingly, they opened up and talked in greater depth about their own experiences and feelings including Ian whose story is described above. It is significant that even in these neutral, community based settings i.e. outside of custody, the interviewee's reflections on the use of restraint suggested that they saw it as an inevitable consequence of incarceration.

6.3 The significance of spaces

Space was created within the CAG which allowed for a group of children to explore their own preconceptions, stereotypes and prejudices about children who offend. It also

provided a space for them to consider the concept of rights before embarking on the research activities.

A great deal has been written about children and spaces particularly within the field of children's geography. There has also been some consideration of spaces for participation (Franks, 2011; Gallagher, 2006).

The analysis of children's voice described in Chapter 3 is also relevant at this point. Creating research spaces, in my opinion, created the conditions in which it was possible for children to be heard, to be listened to i.e. both space and the possibility of voice were created. This builds on the principles of participatory practice (Pain, 2004) by acknowledging the place of rights, the principles of empowerment and respect as well as addressing issues of power and inequality. Abebe (2009) discusses at length the importance of research spaces and in detail about how and why these work and how they address some of the ethical dilemmas involved in research with children. Developing New Space similarly addressed some of these issues by creating a space in which informal dialogue took place and children could *opt into* the research, we considered power differentials and the concepts of 'atypical adults' or the 'least adult role'. She also promotes the idea of lived spaces, rather than artificial research spaces or invited spaces. In a custodial setting there were obvious limitations.

Moss and Petrie (2002) described what they saw as the difference between services for children and children's spaces. Whilst constructing children as citizens with rights and as 'rich in potential, strong, powerful and competent' (p 5) they describe children's spaces as 'environments of many possibilities'.

> They interpret children's spaces not just in terms of 'physical spaces' (a setting for children) but also as 'social space' (a domain of social practices and

> relationships), 'cultural space' (where values, rights and cultures are created) and 'discursive space' (differing perspectives and forms of expression, where there is room for dialogue, confrontation – exchanging different views and experiences – deliberation and critical thinking where children and others can speak and be heard.
>
> Moss & Petrie, 2002, p 9
>
> By trying to put a stutter in the dominating narrative we may encourage others to get a word in edgeways.
>
> Moss & Petrie, 2002, p16

Moss and Petrie outline what they see as the possibility of constructing a different view of children and childhood and of the role of adults within that. They suggest that both children and adults can work in partnership within children's spaces as co-learners and co-constructors of knowledge.

Wyness (2009) defines a distinction between children's spaces and children's places and the role of the supporting adults within and between the two.

> I will argue that while professional adults are committed to creating and sustaining children's spaces, they are equally concerned to locate these spaces within the more conventionally defined structures of children's places.
>
> Wyness, 2009, p 396

Within the two secure settings we tried to establish children's spaces whilst recognising the significant issues around institutionalisation, power and control. My role as a supporting adult within this also created tensions and a lack of fit. I was not an officer, was not 'badged', was not an advocate and had no formal authority. I did not have any

information about the children who filled this space in terms of their offending behaviour, reasons for them being in custody or their behaviour within each establishment. However I am an adult, which brings with it a set of assumptions, roles and responsibilities, opportunities and barriers.

The role of child researchers has been discussed in Chapter 3 together with the important distinction between child researchers and adult researchers. The real and authentic involvement of children in this study opened up new areas that needed to be explored. It is unlikely that these would have come to light without the involvement of the CAG.

Finally, although the Vignettes proved to be of limited interest to children, it is important to note two factors. Firstly because the scenarios described in each vignette were based on first hand evidence from children's own experiences they had credibility and authenticity. This set a tone within the research space based on children's realities. It was clear that children could relate to and identify with the scenarios and the main players within them. This set the scene for children to open up about their own experiences in a very real and honest way. If the situations had been artificial or re-created by the researcher this would have been immediately obvious to the children involved and would, I believe, have lowered the bar in terms of the openness and honesty that we wanted to engender.

Basing the five Vignettes on the interviews I had conducted with children recently released from custody ensured that the information was real and that children could identify with the characters and situations. It was, on reflection, the written format that they struggled with rather than the content. Once the Power Point presentations had been developed, this helped to bring the characters to life. Had we been able to make a

series of short films, or to role play the scenarios this would have improved the interaction. Responses to the five Vignettes were almost always that the use of restraint could be justified because the children were fighting or behaving in an unacceptable or dangerous way. Reflecting about the lead up to each situation did open up discussions about whether or not there had been any point in which staff, or indeed other children, might have intervened to prevent the situation getting any worse. Discussions also took place about alternative ways of handling the situation. These discussions were creative, imaginative and energetic.

Secondly the Vignettes acted as a catalyst which opened up further conversations between children within the research space. The broader conversations involved issues about fairness, justice, rights and sanctions. Once again the breadth of these conversations would have been impossible without the involvement of other children as equals in the research process.

6.4 Reflections from the CAG

Members of the CAG had some clear views about the way that the research was conducted. Creating the New Space meant that there was an informal setting in which the CAG and the children in custody could meet as peers. Although they had concerns, particularly since none of the CAG had any experience of custody, they very quickly discovered the areas of common ground and talked about mobile phones, TV programmes, where they came from and other generalities.

Children found the Vignettes difficult to use. On reflection it might have worked better had they been directly involved in gathering the evidence that was used to generate the scenarios. I conducted all of the interviews that provided evidence for the situations that resulted in the use of restraint that were then amalgamated and replicated in the

Vignettes. Had the CAG been involved in these interviews as well they might have felt more familiar with the people and the stories and have felt more personally involved in a way that made the Vignettes come alive to them.

> *I thought it would be better if we used short films in the Vignettes. They were too complicated and difficult to follow. We could have had films, but obviously not with too much violence in them.*
>
> Shannon, aged 16
>
> *They were too formal, the Vignettes, it was better when they (the children in custody) were in twos and we could give them paper to write things down and give them something to do.*
>
> Zoe, aged 14

As Shannon suggests visual representation in the form of short films, graphics, or the use of forum theatre might have worked better to provoke discussion. However what the Vignettes did achieve was the basis for further discussions between the CAG and children in custody. It was the medium, therefore, and not the message that proved difficult. The Vignettes themselves, for the CAG, were cumbersome and unwieldy and felt too prescriptive. Members of the CAG also had concerns about the levels of literacy for children in custody and thought that visual representations might be easier to follow. They were much more thoughtful than I was about accessibility for all of the children involved.

Looking back the CAG had mixed views about the research and about their role as researchers. It definitely challenged their thinking about how and why children are locked up and about whether or not they 'deserved' to be mistreated once they were in

custody. Initially their knowledge about the criminal justice system was virtually non-existent, as was their knowledge about the UNCRC or Human Rights Act. However they had a strong sense of rights in an abstract sense and about social justice. On an individual level the five members of the group grew in confidence, in their ability to analyse complex information and in their ability to discuss and debate issues. Whether or not the research itself has had any impact is a moot point. I had anticipated that the CAG might become more sympathetic to the experiences of children in custody and to the, in my view, routine, immoral and unjustifiable use of restraint. In reality this did not happen across the board. For children who were incarcerated without having committed any offence (Section 25's) there was a sense that they were being treated unjustly. Members of the CAG accepted the idea, therefore, that if a child has broken the law then harsh treatment including physical restraint, is appropriate. There was a sense even that they 'deserved' to receive such treatment by virtue of the fact that they had broken the law. The CAG struggled with the idea that these children had rights to be treated with dignity and respect and not to be subject to violence at the hands of those who have a caring responsibility.

> *If they've committed a crime then that's just what happens and, well, if you can't handle it inside then well you shouldn't have broken the law. It should teach them a lesson inside.*
>
> Thomas, aged 16

So for children who hadn't broken the law, there was some indignation about them being subject to physical restraint, but for those children who had committed offences, the use of restraint was more or less accepted as part of the package in custody. Morality, it seems, does play some part on children's understanding of rights. The CAG

bought into the legal/procedural justification for the use of physical force for children who they deemed deserved to be punished. However the same did not apply to children who were in custody for their own protection and who somehow therefore deserved to be treated differently and for whom the use of physical restraint appeared to be morally unjustifiable. This is, of course, a complex analysis. We explored children's understanding of why some children break the law and, as suggested above, in the eyes of the CAG the causes were related to poor parenting or to geography (i.e. where you live). As children have no choice about either of these factors we had to agree that law breaking is a complex issue. And, what about agency?

Two members of the CAG, Calvin and Jake, have continued to do some work on the Council of Europe Child Friendly Justice Guidelines (2010), through Investing in Children along with Ian, one of the children released from YOI. They have developed an interest in making the criminal justice system more accessible to children so that they are able to fully understand what is happening to them. All three have become more engaged in thinking about the application of rights and about the injustices within the system. Their experiences within the CAG have inspired them to become more interested and involved.

> *I never really thought about it much, I didn't think anyone could get involved and try to make things better for other children. I'm in care and you sort of let things go and, you don't really understand what is happening like with reviews, and going to court, but I never really knew that you could change them, it was just sort of that's how it is.*
>
> Calvin, aged 17

As to whether the research had any impact on the individual institutions, this is debatable. The LASCH remains interested in and committed to finding ways to reduce the use of restraint, and continue to involve children in these discussions. They have made significant attempts to address some of the issues raised by children through the New Space meetings by introducing additional activities outside of education, increasing access to the gym, addressing failures in the complaints system and introducing better ways of communicating between children and staff. They have continued to promote My Space meetings as a way of encouraging dialogue between children and staff.

The STC unfortunately closed down shortly after the research was drawing to an end so that there is now no possibility of the research evidence being used to benefit future inhabitants of this establishment. Although there has been some interest in the process that we adopted with New Space from other STCs it remains to be seen whether there will be sufficient interest to take this any further. The entire Secure Estate is in a state of flux such that any learning from innovative practice in one establishment is unlikely to be shared across the estate.

6.5 Summary

As a piece of participatory research that explored children's experiences it has as much to say about the research methodology as it does about the experiences of physical restraint. Understanding how I have constructed and understood childhood and how this has influenced the methodology and, therefore, the ethical position that has been adopted is an important element of this research.

Acknowledging the power/knowledge axis and an analysis that mainstream knowledge becomes elevated to common sense and is, therefore, elevated to the 'dominant

discourse', this research explored alternative perspectives, and alternative discourses. Mainstream knowledge is based almost entirely on the views of adults and is, therefore, incomplete or partisan knowledge (Rose, 2004). Research questions are derived from a particular standpoint and the theoretical and methodological perspectives that ensue are, therefore, based on this incomplete standpoint. This research attempted to create a number of different standpoints and to produce, therefore, different knowledge and different truths.

The creation of a research space in which children 'ran the show' and were encouraged to talk about all sorts of issues without restriction became really important. It was a lively, dynamic space.

> The use of these participatory techniques greatly assisted in breaking down imbalances of power, not only by giving children greater control over the agenda and more time and space to talk about the issues at concern them, but also by creating an atmosphere in which there were no right or wrong answers and even some opportunities for children to interpret and explain their own data. In addition the meetings were more fun!
>
> Thomas and O'Kane, 1998, p 343

Askins and Pain (2011) also discuss the importance of participatory practices in 'contributing to a space where interactions might take place' p 2. It was just this space that we were hoping to create, one in which encounters could take place and in which children led the way.

One of the significant contributions made by members of the CAG was their openness. And by this I am in no way suggesting that they lacked capacity or competence.

However their lack of pre-conceived ideas about what the research might uncover allowed them to be completely open to their peers and to what they might be saying. Children did not approach their role as researchers thinking that they knew all the answers. They were better at listening to what the children in custody were telling them for two reasons:

1. Firstly because they had an open mind about what they might hear, and
2. Secondly as children they understood and shared a common language

Participatory research methodologies: This study builds on a constructivist ontology in that it is based on a view that there are multiple realities and multiple truths at play including: those of the researcher, the children who are part of the CAG, staff, children in custody, policy makers and academics. I also take a critical realist approach in supporting the idea that behaviours are influenced by both agency and structure but that there exists some objective reality. It is, for example, a fact that childhood is a period of biological immaturity. The basic assumption of critical realism is the existence of a real world independent of our knowledge of it (Bhaskar, 1998). Critical realism also promotes the need in research to accept and explore complexity in its entirety without having to simplify complex situations and behaviours. There is no one way of exploring the subject matter here nor one way of understanding what happens and why. There are numerous realities and complex forces which interplay. The role of politics, history, and the media are all relevant, as are individual people end events which have shaped this subject matter. What is important, ontologically, is that the possibility of change exists.

By challenging the dominant discourse it is, I would suggest, possible to create an alternative discourse and thereby influence practices. Participatory, rights based

methodologies, I would argue, are one way of challenging the status quo by creating an alternative discourse, different realities and multiple truths.

One of the tensions inherent in promoting the concept of participatory research with children is the issue of capacity/capacities. I am already arguing both that children should be treated as equals (citizens with rights) and also that they should be treated as different in that they have additional rights by virtue of being children. In Chapter 3 I refer to Moosa-Mitha's concept of 'differently equal'. To add to this I also argue that children have the capacity to be researchers by virtue of their status as children (i.e. people with experience) but also that they have evolving capacities (Lansdown, 2005) and that what makes them distinct is the process of acquiring knowledge and learning from experience (Smith, 2010) in a way that is different to adults..

There are also debates around the role of adult gatekeepers (this may be parents, social workers etc.) and about the likelihood that this may prevent the very children who could be the richest source of evidence from participating in or indeed carrying out research because of safeguarding concerns.

Feminist principles: It is abundantly clear that placing children at the centre of this study has created a dynamic objectivity that would not have been possible if I had carried out the research alone. The relationship between the researcher and the researched, in this case the children, created opportunities for the exchange of shared feelings and experiences which rather than being subjective accounts created an interactive, objective body of evidence shaped by people with experience. This co-creation of knowledge recognises the influence of power inequalities between adults and children and between researchers and people with experience. The influence of a

feminist perspective has shaped the methodology that was chosen and acknowledges the importance of the relationship between the dynamic researcher and the researched.

It can be argued that adopting a participative approach with children is an inherently political process which also aims to challenge established research practice by promoting an alternative research paradigm and challenges issues of power and inequality by placing the researchers (in this case children) at the centre of all aspects of the research process. This direct involvement creates a similarly dynamic objectivity that ensures that the research evidence is both shaped and informed by people with experience i.e. children.

The creation of research spaces with an ethos of partnership and equality appeared to support children to be able to describe their viewpoints on the issues under discussion from several perspectives: as children, as offenders, as citizens, as researchers and as research participants. As well as sharing their sense of how damaging, unpleasant and frequently unfair the use of restraint they were also able to articulate their sense of the futility and inevitability about its use. Earlier chapters outlined the central issues concerning the use of physical restraint over the past decade. Bateman (2014) discusses the issues associated with the current fall in youth crime and reduction in the numbers of children in custody throughout the 2000's. Whilst such reductions are, of course, welcome Bateman issues words of warning. He suggests that for children in conflict with the law austerity informed policy combined with the neo-liberal need not to appear soft on youth crime may not bode well. In addition to this warning, I would suggest that, whilst adult institutions remain convinced of the need for penal punitivism which results in the inevitable use of physical restraint, without the imagination or incentive to find alternatives the future for children in trouble remains bleak.

Whilst children themselves also appear unaware of their rights and there is little attempt to address the issue inside the institutions there is unlikely to be a challenge from within.

Chapter 7 pulls together all of the findings and attempts both to draw some conclusions and to discuss these within the broader context of the position of children in England in 2014/15.

Chapter 7 –Discussion and Conclusions

Part I – Intellectual/academic contribution

7. Introduction

The final chapter synthesises the findings from this study with some of the material discussed in previous chapters, and through the lens of children's human rights. It draws conclusions and discusses these within the bigger picture of children in the UK in 2014/15.

The following key themes have emerged during the analysis and will be discussed in greater detail in this chapter:

Part I

- Children's human rights in the secure environment
- Children's everyday experiences of violence
- Children's acceptance of the use of restraint
- The significance of gender
- The importance of relationship

Part II

- Alternatives to physical restraint
- Future- focused research

This final chapter will set out some of the main conclusions and discuss these whilst acknowledging the importance of the context described in previous chapters.

From a rights perspective the use of physical restraint is indefensible. However there is little interest in pursuing alternatives and an unwillingness to engage in the debate other than within NGOs such as INQUEST, CRAE, The Prison Reform Trust and The Howard League or academic interest.

In my view the reasons lie in understanding how the concept of children, and specifically child offenders are constructed, combined with understanding the motivation behind locking children up. Any way you look at it the use of restraint is futile. It does none of the things that it purports to do. It does not protect people and or property, with evidence that both children and staff are frequently injured during the course of a restraint. It cannot be said to maintain good order as it is, of itself, a violent encounter between children and adults and one which children are frequently witness to and find upsetting and disturbing. It cannot engender self-control and children described feeling more angry after being restrained than before and more likely to lash out when they are prevented from expressing pent up feelings and frustrations in other ways. And finally it does not support the rehabilitation or resettlement of children when they describe the ways in which they are manipulated by staff into situations in which the use of restraint becomes a necessity and perpetuates the normalisation of violence. This suggests the existence of poor relationships between some staff and some children that is not based on respect, equality, dignity etc. The continued use of restraint when it is demonstrably ineffective, possibly unlawful (CRAE, 2014), and inherently unsafe (BMA, 2014) must be for some other reason.

Involving children in various ways during this study introduced a unique and essential element to the research. As with all participatory research there is a great unknown at the outset. Although I had my own socially constructed view of the world that has been

informed by a commitment to social justice influenced by a feminist perspective, a fundamental commitment to human rights and a view that incarcerating children is morally wrong, I also believe that 'you don't know what you don't know' and that research which attempts to explore a number of different perspectives and different realities and is committed to the child' voice, opens up all sorts of unknowns. I had ideas about where I thought the research might lead and ideas about what might be discover. I was also open to the research taking us to unforeseen places. This chapter will explore some of the anticipated outcomes as well as those unexpected places.

7.1 Children's human rights in the secure environment

The rights issue remains a difficult and unresolved one. That children's human rights are flouted on a daily basis across the secure estate is, on the basis of the research, incontestable. This is both in terms of their legal rights under the UNCRC and Human Rights Act 1989 as well as their moral right to be treated as citizens. The conceptualisation of children and childhood plays an important role in how children in custody are perceived and therefore, how they are treated. Issues around punishment, care and control create dilemmas and a conceptual confusion in which the possibility of simply ignoring the - rights as citizen - dimension continues to be possible. The child as tabula rasa, as active social agent or as not yet fully formed neurologically also results in a lack of agreement about how best to care for, to educate etc. and about how to respond to children who don't conform or who challenge the accepted norm. By failing to construct children, specifically children who offend, as citizens with rights it is possible to see them as other, or as lesser citizen, lesser being, and therefore to fail to consider their human rights.

An analysis that takes account of a rights- based approach provides one of the cornerstones for this study. By exploring rights issues with children I have developed an analysis that goes some way to explaining why this state of affairs prevails within the secure estate framed as 'protection'.

Whilst the rights agenda in practice in the UK today focuses on children's right to participate, and their process rights i.e. the right to complain etc. and not on other rights violations in custody including the unlawful or at least immoral use of physical restraint it seems unlikely that anything much will change. As long as the inevitability of the use of restraint in custody is accepted there is very little prospect of a rights perspective gaining purchase. What Gooch (2013) describes as 'fatalistic compliance' suggests that children are resigned to the continued use of physical restraint. The focus on process rights and participation rights creates a smoke screen of rights-based activity that in fact obscures a lack of activity or interest in fundamental rights considerations including: the prohibition of torture or inhuman or degrading treatment or punishment (Article 3), the right of every child deprived of their liberty to be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of her age (Article 37).

7.2 Universal, situated and process rights

My argument is that a rights- based approach is not only morally the right thing to do, but also that conceptualising 'the child' as a competent rights-bearing citizen might promote a different response to children in custody by contributing to an alternative discourse and challenging the existing status quo. It has to be acknowledged that the move within the criminal justice system to what is referred to in previous chapters as the 'responsibilisation' and 'adulteration' of children and the acknowledgement of

children's competence and agency is at odds with the notion that children *should* be treated differently to adults and that they, somehow, deserve different or additional rights. It is important to be clear about the difference between universal inalienable human rights that exist for all children and adults and which are enshrined in international as well as domestic law, situated rights that are in force by virtue of the specific location of the child i.e. within the secure estate, and process rights in this case the right to legal representation, the right to a fair trial, the right to make complaints etc.

7.3 Additional rights

I am arguing that children have the same human rights as adults, the same moral rights and the same rights in law although the enforceability of those rights is at times tempered. I am arguing for their status as citizens, i.e. members of this society as well as by virtue of being human beings. This brings with it their right to be treated equally with adults i.e. to be able to express an opinion, to be safe from harm, to have the full weight of the law behind them and so on. However I am also arguing that they have additional rights by virtue of adults' responsibility to safeguard and protect them into adult hood. There are inherent contradictions within this position.

> Modern day paradox between the idea of children as 'autonomous rights bearing individuals and as a distinct social category whose most important 'right' is to be a child.
>
> Smith, 2010, p 43

Some authors have discussed this as their foundational rights i.e. stating that society has a responsibility towards children not to do anything that damages or interferes with a child's right to become a fully competent adult (Hollingsworth, 2013). There is an

inevitable tension between arguing that children have the same rights as adults whilst also arguing that they should, in some circumstances, be treated differently, although structural issues: power and inequality (Alanen, 1988) and discrimination, are relevant to consider. In my view children have additional rights because of their status as children.

7.4 Children's everyday experience of violence

7.41 The normalisation of violence: It appears that within the secure estate children who are incarcerated accept as 'common sense' that the use of physical restraint is both necessary and acceptable as a way of managing their behaviour. Indeed it is frequently argued that it is, in fact, in a child's best interests. In order to keep a child safe either from herself or from another child it is sometimes necessary to restrain children.

The presentation of the use of physical restraint as normal, everyday practice secures consent from a marginalised group (the children in custody) by presenting their definitions of reality, ideas and behaviour as the only sensible way of seeing the world. The institutions have convinced children that the use of physical restraint is in their best interest and that it is helping to keep them safe. Arendt (1970) distinguishes between violence and power and maintains that power comes from the collective will and does not need violence to achieve any of its goals since voluntary compliance takes its place. She examines the relationship between power and violence, both of which have significance in children's custody and may be a way of understanding the use of violence in this context. In the practice of violence, she suggests, the means may overwhelm the end. Arendt goes on to suggest that the most probable change resulting from violence is more violence. It is these propositions that are relevant to this study. If

the practice of violence in children's custody, used in the name of children's safety, results in more violence it is clearly counterproductive.

The language used around the processes and procedures, and the culture that has been created promotes the routine use of physical restraint as safe practice. Children refer to CIF's and staff talk about 'critical incidents'. The policies, procedures, paperwork etc. all refer to critical incidents creating a distance from the use of physical restraint/physical force as a physical and forceful intervention and placing it as everyday safe practice. It becomes a procedural rather than a physical act. It creates and sustains a feeling of inevitability about the continued routine use of restraint. Ray (2011) also discusses the significance of language in the genesis of violence and investigates hegemonic masculinity.

> Justifications of violence are learned speech acts that prepare the ground for violence and deploy wider available narratives in society.
>
> In these terms, excess male violence reflects patterns of socialisation in which the male role involves greater readiness to use violence as a means of control and assertion of power.
>
> Ray, 2011, p 88

Goldson (2009) refers to 'euphemisms' and the work of Cohen who discussed the idea of 'special vocabularies' when referring to particular regimes and practices within children's prisons. The idea that physical restraints are critical incidents, or indeed 'critical incident forms' or that the use of physical force is a way of maintaining a safe environment disguises the reality that it is a form of violence against children.

Questions remain about why the use of restraint persists, in the face of overwhelming evidence that militates against its continued use with children.

> If it is not safe, if it heightens rather than diminishes the emotions and violent behaviour of children in incarceration and adversely affects adult professionals, if it does not teach anything then why do we continue to use it?
>
> Smith & Myers Bowman, 2009, p 80

A review of medical theories and research relating to restraint related deaths concluded the following:

> Young people (under the age of 20) are vulnerable to harm when restrained because of physiological immaturity.
>
> Aiken et al., 2011, p 34

Following a review conducted by the British Medical Association (2014) calls for a 'fundamental culture shift in the use of force and restraint in the children's secure estate'.

Steckley and Kendrick (2007) conclude from a piece of research that explored children's experiences of physical restraint:

> We have shown that children and young people do not reject the use of physical restraints out of hand. They recognise that in certain situations a restraint is the most appropriate intervention to ensure the safety of the young person.
>
> Steckley & Kendrick, 2007, p 20

There is evidence in a number of different fields that the use of physical restraint with children is something that professional staff find ways to justify legally and in practice

but that they find morally questionable. In order to overcome this discomfort the use of force is justified in a number of ways. Bray et al. (2014) describe the way that parents are frequently involved in the restraint of children who are undergoing medical procedures so that staff can avoid doing so. This goes some way to overcoming the ethical and moral issues involved. The ethics involved are somehow avoided as an issue to be addressed because it is a child involved.

In psychiatric settings involving children the persistence of the medical model to understand and treat mental ill-health and challenging behaviour results in the regular use of chemical restraint but also the use of physical restraint. MIND (2013) recently reported on the use and impact of physical restraint in mental healthcare settings in England. And in criminal settings such as the secure estate the use of physical restraint is justified in terms of children's safety (either their own or other people's) and as evidence of safeguarding procedures. Little acknowledgement is made of the fact that the environment in which children are placed, and the overall ethos and culture within the institutions are inherently unsafe and children are therefore restrained for reacting to living in an environment which inevitably places them at further risk. In each setting, I would argue, that the co-construction of meaning i.e. expectations of both staff and children that the use of physical restraint is a given and one that can be justified legally enables its use to be accepted morally and ethically.

It should have come as no surprise to me, as there is a great deal of evidence in research, in the media, in practice and in every- day life that we live in violent times. And as one of the most defenceless and least well represented groups in society it should be equally unsurprising that children are at the receiving end of or witness too much of that violence. The children who were part of this research talked about violence in their

families, violence in their communities and their neighbourhoods, violence in their interpersonal relationships, violence in the schools and the PRU, violence at the hands of the Police or in residential care homes, and violence in custody. This violence was an everyday fact of life for many of the children who took part in this research. In many cases they expected it or at least were unsurprised by it. Many of the children had been treated violently by parents, and by professionals whose job it was to teach, care for or guide them. This included teachers, residential social workers, care officers or prison officers.

One child, during his interview revealed that it was a relief when he came into custody. Having lived in a violent family and witnessed or received violence at the hands of the Police when he was finally locked up he told me:

> *It's a relief now. I know what to expect, I know how it works.*
>
> Craig, aged 16

Violence in children's lives has been reported elsewhere:

> The adverse experiences of the majority of these young people were severe: 51% (15) of them had witnessed and become involved in serious violence between their parents; 65% (19) reported physical abuse or ill-treatment by their parents and 50% (9) of the girls although none of the boys reported sexual abuse, rape or sexual exploitation.
>
> O'Neill, 2001, p 266

Many of the children we talked to including those in custody, those who had been released and some members of the CAG experience and witness violence as an everyday occurrence in their lives. This is not new, a research study investigating the health and

well- being of socially excluded children (Broad and Monaghan, 2001) concluded that 80% of the children reported violence as having been significant in their lives. Children live with domestic abuse, they live with shouting and fighting, they live in violent communities, they witness shouting and bullying in school, they experience aggression from the Police. The use of violence to control and manage their behaviour when locked up therefore, does not always come as a shock to them. Some of the children who have been in the care system reported that they had been restrained when they lived in children's homes, and several children who had been excluded from school had been restrained within alternative education and the PRU. Experiencing violence and a lack of respect from adults is normal for many children. Their acceptance, or implied consent to be treated disrespectfully, and to be threatened with or actually treated with physical and or verbal violence is, I suggest, the result of a failure on the part of society (civil society and the state) to recognise children as rights bearing citizens and the hegemonic acceptance, that's how life is for some children.

7.5 The 'best interests' dynamic

It may also be relevant to explore the concept of best interest at this point. Article 3 of the UNCRC, introduced the concept of the child's best interests:

> ***Article 3***
>
> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
>
> UNCRC, 1989

Debate centres on some of the wording used and the question of whether the child's best interests are *the* paramount consideration or *a* primary consideration. Cantwell

(2011) suggests that the general obligation on states is of course to look on these (the best interests of the child) as simply one of the primary considerations (p 49) rather than as the overriding consideration.

It is a moot point, however, as to who decides on the best interests of a child. Is it the parent(s), is it the child herself, or is it a purely legal undertaking. Whatever the case a hegemonic take on 'what's best' i.e. common sense, may go some way to understanding the current situation. The idea that 'adults know best' exists and is a powerful undercurrent of good parenting and of education, health and social care practice with children. The Children Act 1989 (Section 1) introduced as its first principle that the child's interests are of paramount importance in all decisions made about her welfare, and the Act introduced a 'welfare checklist' of the elements to be considered in determining the child's best interests. This legal requirement reinforced the belief that adults know best when it comes to decisions about children. The welfare checklist does also require that the wishes and feelings of the child are taken into account although for reasons suggested above there is minimal evidence that this translates into tangible outcomes.

Children's best interests however often lose out to the needs of institutions or to adults interests. With all of the evidence that exists of the damage that is done when children are incarcerated, together with the negative impact of the use of physical restraint it is very difficult to argue that this technique is used in the child's best interest. Unless, of course, the argument is that it is in the interests of her safety or the safety of others. Custody, however ordered and well managed, is an inherently unsafe environment in which to care for children with complex and challenging needs.

> Despite the various policy and procedural reforms that have been, and continue to be implemented and the determined practical efforts of some operational staff to take account of the specific needs of child prisoners, penal custody remains an unsuitable environment for children….Lack of 'care': under-qualified and over-stretched staff; cultures of violence, intimidation and bullying; prevalent racism, sexism and homophobia; omnipresent fear and anxiety; penal regimes that provide only minimal and wholly inadequate 'safeguards' – these are the realities of life inside for many children in penal custody. The degradation, the claustrophobia, the denial of 'childhood', the emptiness of time and fear of place corrodes and crushes the child's sense of self.
>
> Goldson and Coles, 2005, p 98-100

It is very difficult to sustain an argument that locking children up is in any way in their best interests either individually or collectively. How, then, does this become translated by some children themselves, as *'I deserved it'*, '*I was asking for it'*, '*she was just doing her job'* and so on. And unlike in some aspects of social care which are now beginning to recognise and to operationalise the involvement of children in making decisions about their care (in the Looked After system for example), there is scant evidence of this within the courts. When sentencing or remanding a child to custody or to secure accommodation is any account taken of the 'wishes and feelings of the child'?

If we replace the notion that adults know best with one that suggests that adults don't necessarily know best but that they know different it opens up a possibility of the child having her own ideas about what is in her best interests, and therefore that her voice in all decisions is absolutely critical.

7.6 Reluctance to investigate alternatives

There have been repeated attempts to reduce the use of physical restraint and the current implementation programme of MMPR is an attempt, it is claimed by the Government, to provide a safer and more coherent approach which involves improved training and monitoring. However no such investment is forthcoming to develop alternatives. The lack of a viable alternative, for staff, creates an immediate obstacle to challenging current practice.

> *There isn't an obvious alternative. That makes it difficult to sell to practitioners i.e. we're not offering them anything else.*
>
> Key Stakeholder

It is astonishing that despite all of the evidence from recent enquiries, investigations, reviews and research all of which suggest that the use of restraint is detrimental, possibly dangerous or even lethal and frequently unlawful that there has been no move to end the use of physical restraint on children and replace it with safe, ethically defensible and effective alternatives.

> The use of pain compliance is unacceptable.
>
> NPM, 2013, p 5

> It is a matter of serious concern to us that, despite the fact that the use of force in restraining young offenders has now been definitively linked to the death of at least one young person in custody, the use of restraint rose considerable across the secure estate last year.
>
> March 2013, House of Commons Justice Committee

This reluctance is, I suggest, the result of several interlinked factors. These are: constructing children in custody as either helpless child or as challenging offender; the absence of a rights framework that emphasises the fundamental rights of *all* children; and finally the hegemonic influence of the 'adults know best' principle which creates a vindication for the inevitable use of restraint which is persuasive of the children themselves.

7.7 The inevitability of restraint

It is both possible to develop alternatives to the use of restraint and to manage potentially unsafe situations. However there appears to be no appetite to explore such alternatives, with the roll out of MMPR, and the use of pain compliant procedures, any calls for the use of restraint to be ended will fall on deaf ears. CRAE (2014) has called for the re-introduction of restraint for the maintenance of good order to be prohibited.

The use of the term restraint is used in various settings interchangeably with terms such as: clinical holding, physical interventions, physical restriction, immobilisation and therapeutic holding. There is evidence from other research that there is an element of inevitability in these settings and that other legal, ethical and rights issues are largely sidestepped.

> Inevitability was the core concept and was tied up with the completion of the procedure. The focus on the completion of the procedure as the only option (inevitability of completion) despite anxiety, upset or distress was justified by holding being seen as necessary, unchallenged and expected part of completing a procedure.
>
> Bray, et al., unpublished, p 23

This is, however, a complex subject with competing and even conflicting responses. Children also demonstrated an element of bravado when talking about their experiences. They did not want to appear to be weak or exposed, particularly in front of their peers.

And we must bear in mind the possibility of a gendered dynamic between the CAG and those children in custody. Two girls and three boys came into the secure settings where children have limited access to the opposite sex. This may have had a bearing on the extent to which bravado played a part. Whatever the sexual orientation of the participants, there were members of the same or opposite sex present in a situation in which there is normally very little opportunity to explore relationships. Whilst the CAG were not visiting on social grounds they were present on a different basis to me, as an adult researcher. It is likely that there was some tension about how each of the groups and individuals wanted to be seen. This might, therefore, include wanting to be seen as strong, to boast about how easy the environment was i.e. the idea of it being a holiday camp. And children placed in custody are at times shamed or embarrassed at the reasons for their incarceration and may have wanted to conceal this by appearing to be having a good time at most or at the very least surviving their time inside.

7.8 The significance of gender

Gender issues between children and adults i.e. the children and their carers/custodians, are largely ignored in the secure estate. Research has addressed the different gender issues that result in a disproportionate number of girls in custody and the different thresholds that exist for their incarceration. There is some acknowledgment of injustices emerging around policing and the criminal justice system in respect of people who are lesbian, gay, bisexual and transgender. However there is little

acknowledgement of the significance of gender identities and gender fluidities. Research has recently investigated the needs of women and girls particularly around the issue of resettlement. There does not appear to have been any recent research which explores gender issues between staff and children in custody, yet it was a significant issue for the children involved in this study.

One recent study Stevens (2013) suggests that female staff in adult therapeutic settings represent 'a significant rehabilitative resource' and also suggests that the residents in male therapeutic community prisons were themselves alert to the gender dynamics.

Cawdry (2005) explored the gender issues involved in the use of physical restraint during a workshop in Dublin delivered as part of the Residential Childcare Project. Practitioners reflected on the numerous, and complex issues involved which included gender stereotyping. One of the overall findings from this piece of research, which revealed that male staff had been involved in over 90% of restraints in the previous year, raises some questions about gender issues:

> The gender balance of staff deployed in restraint does not therefore reflect the overall gender balance of staff within the centre.
>
> Cawdry, 2005, p 5

Gender was raised by children in a variety of ways during this research. Their gendered analysis of each other's behaviour, of the intentions and actions of members of staff is significant to the research we carried out. It is significant that the issues they raised were almost entirely about the relationships between girls and members of staff and rarely referred to boys. Issues around gender stereotyping, the role of masculinities and heterosexism warrant further research.

One of the participants was in the process of gender re-assignment and his behaviour was perceived by staff to be particularly problematic. It was not possible or appropriate to single this out for further analysis. However his presence did present a challenge and he was frequently subjected to physical restraint.

7.9 The importance of relationship

Children described the importance of their relationships with individual members of staff and described how, on occasions a good relationship made it possible for challenging situations to be managed without the need for physical restraint. The elements of a good relationship for children included adults who were respectful, non-judgemental, and fair and who did not appear to be in the job purely for the money.

Children could readily identify members of staff that they felt they could relate to specifically and in whom they had a good relationship. They were often also able to identify specific individuals who were recognised as someone who had a foot in both camps in that they could be relied on not to immediately take the party line but to take more seriously children's complaints and concerns. In one institution this was an Activity Coordinator and in another a Residential Care Worker.

Steckley and Kendrick (2007) report on the importance of relationships and physical restraint and reflect the views of children who took part in their research. They acknowledge that restraint takes place within the context of relationships between members of staff and the children in their care. Children commented on how the relationships are affected by the experience of a restraint. At times children reported that it had negatively affected their relationship with staff although there were other times when the reverse was true.

> Conversely, a surprising number of young people, almost a third, spoke of the experience of being physically restrained as having a positive impact on their relationships with staff.
>
> Steckley & Kendrick, 2007, p 17

During our study some of the children spoke about the relationships with staff and how they could identify the individuals who would jump in too quickly or react with the immediate use of restraint and others who would sit back and try to calm things down before getting involved physically.

> *Some staff will do it more than others, some just can't be bothered and you know that some of them like it they are enjoying it. You know who you can wind up and they react and you know who can just sit and they will just watch and see what happens.*
>
> John, aged 16

In discussing the Vignettes several children felt that if the staff had better relationships with the children and did more pro-actively to stand up for them or to try to sort things out for them such as: arranging family contact, contacting solicitors or YOT workers or ordering make-up and clothes etc. this would improve relationship between the adults and children in custody. Where the children had become frustrated with lack of action on particular requests they had made they would often take it out on staff within the house or unit where they lived. When staff reacted defensively to this and appeared not to try to resolve issues or to find out what was happening this could provoke an outburst which might end up in the use of restraint. Children responded much better to

those members of staff who would always try to sort things out for them and to take them seriously.

Children felt that there were times when a particular member of staff might be able to intervene in a conflict situation and to de-escalate the events such that it would not end up in a restraint. Often this was through tone of voice, non-verbal communication, finding private space for the child and listening to them. This relies on the staff to have good communication and relationship building skills as well as there being sufficient numbers of staff on duty to make this possible.

Part II – Implications/recommendations for policy and practice

Findings from this study are already beginning to influence practice at a local level within individual institutions. It may also therefore be possible to influence policy and practice on a broader scale. This and previous research suggests that changes can be made which improve children's experiences in custody and also minimise or even rule out the use of restraint. Creating an environment which is underpinned by a rights framework and which is focused on the relationships between children and their adult carers creates an entirely different context to that which currently exists. Evidence exists that improved outcomes are achieved by placing children at the centre of services and making sure that these are shaped by children's experiences and opinions. Children have described the importance of gender and of gender stereotyping which should also be acknowledged within the custodial setting. Acknowledging children's prior experiences of violence and demonstrating alternatives may begin to create different ways for children to explore their own ways of responding to the challenges that they face and to experience their right to be safe. And finally, it is evident that alternatives to the use of restraint do exist and institutions should reflect on and be able to justify continued use of physical restraint in the face of viable alternatives.

7.11 Alternatives to physical restraint

There remains, of course, the argument that if children are not locked up in the first place then the use of physical restraint whilst they are institutionalised is no longer an issue. And there remains an argument for restraint free custody so that the use of restraint is never permissible under any circumstances. On the basis of the findings of

this study I would argue that it is not the existence of restraint per se, rather it is how and when it is used, not than the fact that it is used that violates children's rights.

Children described strategies that they thought would reduce the incidence of challenging behaviour occurring in the first place, but also that might reduce the need to use physical restraint when situations had/or were getting out of control. They included improving relationships between children and members of staff; giving children time and space to let off steam; improving the ways that children feel listened to and respected in custody.

And there are other alternatives in place elsewhere (trauma informed care, violence reduction strategies, NVR – Non Violent Resistance etc.) all of which suggest that the use of physical restraint is a chosen response to challenging situations and not the *only* response. In the UK Barnardo's are currently working with the LASCH involved in this study to provide a secure residential facility for children who have experienced trauma. All staff have received specific training on issues affecting children as a result of trauma, the emotional and behavioural challenges and they are piloting new ways of providing care for these children. The National Centre for Trauma Informed Care, based in the USA also pioneers alternatives to seclusion and restraint (www.samha.gov/nctic). Based on work within the field of substance misuse and mental health the NCTIC is exploring innovative and non-violent ways of caring for challenging individuals.

Work on the NVR Non Violent Resistance model is being carried out with parents and carers of children who demonstrate challenging behaviour. Whether the result of mental health issues, learning disabilities or as a result of trauma new strategies of care are introduced based on systemic family therapy (www.partnershipprojectsuk.com).

These models are based on an alternative view of childhood and an alternative view of care and, as such, are worthy of further exploration. They contain within them other possibilities and opportunities for institutions to rethink how best to care for and respond to the challenges brought about by incarcerating children.

7.12 Future areas for research

This has been forward thinking research and has largely been successful in its aims both methodologically and in providing some useful evidence about the use of restraint in custody from the perspective of children. As with any sound research it has also raised as many questions as it has answered. If I were starting again I would do it differently and I would want to explore some issues in greater depth, particularly the issues around both gender and the pursuit of alternatives. Generating further research questions in this field is useful in promoting new areas of work that might continue to raise questions about the persistent use of violence against children in custody.

Whilst the creation of a research space in secure settings did generate opportunities for children to explore issues openly and extensively there were nevertheless obviously limitations to this. Those limitations include: which children chose or were chosen to participate and how this was gate-kept. Also, children who took part in the research after they had been released were perhaps predictably much more critical and less accepting of the use of restraint than those who were in custody at the time. Nevertheless there was evidence that these individuals also accepted that at times, particularly when fights broke out, the use of restraint was necessary. Creating an opportunity for children from the criminal justice system to participate in research without them being selected by adults would have, I believe, created a different dynamic.

Additional areas for research:

- Further exploration of the concept of research spaces, underpinned by a wider analysis of spaces would be instructive.
- The significance of gender is an obvious gap in the current research. This includes investigating the interplay between boys and both female and male staff and the relationship between girls and both male and female staff. Similarly relationships between boys and girls in custody would be useful to explore further so that comments could be made on how best to care for mixed gender groups of children.
- At a time when the prospects for girls in the secure estate is even more challenging than ever there is no better time to explore issues for girls in custody in greater depth.
- Using the same methodology researching alternatives to the use of physical restraint by investigating what happens in other countries, within different jurisdictions and also by looking at other fields (paediatric medicine, mental health, learning disability etc.) would be useful. Advances in the fields of trauma informed care and the concept of violence free custody are significant.
- Further research that looks at the impact of 'normalised' violence on children is vital if we are to further understand and prevent violent childhoods.
- Action is needed urgently to investigate the use of physical restraint in pupil referral units and in alternative education. The suggestion made by children who were interviewed in this study would suggest that it is routinely used but may receive very little attention when compared to its use across the secure estate.

- Issues around sex, sexual orientation and sexuality also need some further investigation. Whilst children receive traditional sex and relationship education whilst in custody it would seem that very little attention is paid to issues around sexual relationships for some children who are in custody during much of their puberty. There is some exploration emerging about the issue of sex and sexual identity in prison with the current Commission on Sex in Prisons underway, which is being conducted by the Howard League. As part of this Commission a seminar on The Impact of Prison on Children's Healthy Sexual Development (September 2014) looked at issues around sexual experiences, sexual activity, sexual development and children in the justice system. Using a participatory research methodology to conduct this research would be enlightening.
- The concept of liminality may also be useful to explore. Liminality entails an effective separation from everyday routines and entry into an alternative social space in which different rules, different values and different relations apply. It is the transitional period or phase of a rite of passage, during which the participant lacks social status and demonstrates obedience and humility. This could be further explored.
- Finally research that investigates the reality of the human rights of children, and that pursues the real violation of rights is long overdue. The UK has a good track record of promoting Article 12 (UNCRC) participation rights but very little evidence that it is having a significant impact on the way that children experience equality, respect etc. Research that investigates other rights violations for all children would be timely.

7.13 What have we learned and how useful is it?

The two secure establishments that supported this research have been open and transparent in their attitude towards the research. They were keen to learn and to improve practice. They wanted to learn from what children had been saying and about how they might make improvements. I believe they genuinely wanted to reduce the incidence of physical restraint and were both concerned that, whilst the numbers of children in their care had been reducing there continued to be a proportionately high incidence of physical restraint with these children. Whilst they were interested in minimising the use of restraint there was no current appetite for banning its use completely or even for the debate. MMPR will open up the use of pain compliant techniques and, it is highly likely that within the Secure Estate restraint will again be permissible to ensure good order and discipline.

One senior manager within a secure establishment commented during a visit:

> *In 20 years' time we will look back and think, whatever did we think we were doing locking up children and using physical force to control them*.

7.14 Summary

Children's apparent acceptance of the inevitability of physical restraint, and of restraint as a 'given' appears to be the result of a number of complex and interrelated factors:

- The lack of an explicit children's human rights framework within the secure estate;
- The manner in which it is used and not the fact that it is used;
- Their experiences of violence as an everyday occurrence.

Whilst at times there was a sense of injustice or outrage at the use of restraint it was the manner in which children had been restrained that they appeared to find difficult rather than the fact that it had happened at all. Their acceptance of the everyday reality of physical and verbal violence, the lack of any sense that children have rights and the hegemonic culture that prevails within the secure settings all create an ethos of acceptance.

For adults the acceptance appears to rest on the above factors combined with additional considerations, including:

- A belief that restraint is necessary, that it is in the child's best interest and that it does keep them safe;
- Given the significant decrease in the numbers of children in custody in England these final few children must be *the* most difficult to manage;
- Some dishonourable reasons to justify the use of restraint including a desire to punish, and also self -gratification; and
- A lack of will to explore alternatives.

Gender issues were significant to children in custody, specifically gender issues between staff and children. This appears to be an area of practice that has not been fully explored and which might create some space for looking at alternative ways of working with children. Exploring the possible benefits of the gender differences between male and female staff, as described by children, might prove useful when investigating possible alternatives to the use of restraint. A more sophisticated approach to gender issues, which includes addressing lesbian, gay, bisexual and transgender issues is overdue.

Although there is some acknowledgment of the distinct needs of women and girls within the criminal justice system as a whole, there is little evidence of any specific measures to address the needs of girls within the secure estate, or about the impact on girls of physical restraint.

The relationship between staff and children in their care is an important and significant issue for the children involved, and could make the difference in managing challenging behaviour in custody without the need to resort to the use of physical force.

The contributions made by members of the CAG as partners in the research process were invaluable. They brought a unique and essential ingredient which is their contemporaneous experience of children and childhood.

As a piece of participatory research the creation of a research space was useful, meaningful and generated a level of dialogue between children and researchers that surpassed the use of Vignettes on their own. The research spaces were a useful way of addressing some of the ethical dilemmas inherent in participatory research with children.

And finally this research contributes a unique insight into the world of children who are incarcerated. This insight challenges the use of incarceration as a means of either punishing or rehabilitating children. Whilst the use of physical restraint, in the manner in which it is currently used, remains a significant tool for managing challenging situations there will continue to be children whose basic human rights are violated on a daily basis at the hands of those whose responsibility it is to care for and safeguard children.

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Appendices

Project information sheets, consent forms and interview schedules

Research Project Information Sheet

Hi, my name is Felicity Shenton and I am doing a PhD at De Montfort University. I am investigating young people's perceptions of the use of physical interventions in custody (in Secure Children's Homes, Secure Training Centres and Young Offenders Institutions) and at whether adopting a rights-based approach might have an impact on the use of physical interventions.

I will be involving young people themselves in the research, both those who have been in custody in the previous 12 months and those that are currently in custody. I will be using a qualitative approach including interviews and focus groups with these young people.

In addition to this I am hoping to carry out interviews with key informants who have an interest or expertise in children's human rights and/or the youth justice system. This includes managers and practitioners from within the youth justice arena, as well as researchers, lawyers, policy makers and campaigners. Key informants will be asked to participate in an interview that will last for no more than one hour and will, with permission, be recorded and transcribed. I am hoping that this will ensure that the research is located within the current academic, practice, legal and political context.

All of the information gathered will be reported in an anonymous way and the identity of individuals and organisations will be protected. Information will be kept in a secure place,

will only be used for the purpose of this research. No other person will have access to the original data (transcripts etc.). All participants will have access to the final research report.

Contact details

For further information please contact: Felicity.shenton@durham.gov.uk
TEL: 03000261502

If you have any concerns you can contact Jean Hine (Lead Supervisor @ De Montfort University) jhine@dmu.ac.uk
TEL: 01162577764

CONSENT FORM

(Please tick those that apply)

I have had the research explained to me and I understand my involvement in it.

I give permission for the interview to be recorded.

I have read the Information Sheet.

I understand that my involvement is voluntary and that I can withdraw at any time.

I agree to take part in the research.

Name:

Position/Job Title:

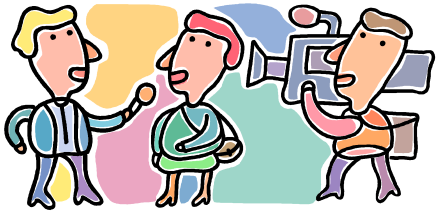
Signature:

Date:

Research Project Information Sheet

Hi, my name is Felicity Shenton and I am doing a PhD (like writing a really long essay) for De Montfort University. I am trying to find out how young people want to be treated when they are locked up and what they know about their rights when they are in custody. I am hoping to talk to young people who are or have been locked up to find out what they think, so that I can understand more about what goes on in custody. Your opinion is really important.

I want to find out about young people's relationships with members of staff when they are in custody. I am hoping to find out whether the staff ask you what you want to happen and how you want to be calmed down if you are getting upset. So I am trying to find out more about what happens when young people get upset and how this can be handled without using restraint if this is possible.



If you agree you will be asked to sign the consent form below (if you are under 16 your parent/guardian will also need to sign this) and then to take part in an interview or a group meeting, which will be recorded if you agree. The interviews will last for about an hour and can happen anywhere you choose. You will receive either £10 in cash or vouchers and, if you want to, you will get a copy of the report at the end of the project.

I hope that you will want to take part in this research. All the information will be kept private and confidential and after the project all of information will be destroyed. Your name will not be used in anything that is written so no one will know it is you. It's all voluntary and you cannot be forced to take part. You can also change your mind at any time and there is no pressure. If you give me any information that makes me think you are at risk or that you are in danger I might have to tell someone else, but I will talk to you first about how the information will be passed on.

If you have any concerns during the research you can get more information from any of these websites or I can put you in touch with someone that may be able to provide help and support if you need it:

- The Children's Legal Centre: TEL: 08088 020008 http://www.childrenslegalcentre.com/
- Government Information is available online: http://www.direct.gov.uk/en/Parents/CrimeAndYoungOffenders/index.htm
- The Howard League free, confidential legal service helpline TEL: 0808801 0308 http://www.howardleague.org/get-advice0/

Or you can always call ChildLine to talk to somebody:

Can I get any other information?

You can contact me at any time to get more information or to tell me what you think.

Felicity Shenton

Felicity.shenton@durham.gov.uk

TEL: 03000261502

If you are not happy about anything that happens or if you have a complaint to make firstly ask me or ask a member of staff that you are working with. If you are still not happy you can contact Jean Hine (who is the Lead Supervisor for this research from De Montfort University) jhine@dmu.ac.uk TEL: 01162577764

CONSENT FORM

(Parent/guardian signature *also* required if the young person is under16)

Please read the Information Sheet first and then read the following very carefully:

I have had the research explained to me and I understand my involvement in it.

I give permission for the interview to be recorded.

I have read the Information Sheet and have been able to discuss it with the researcher/my worker.

I understand that my involvement is voluntary.

I understand that being involved will not have any effect on any other areas of my life (i.e. YOT, my sentence, school etc.)

I agree to take part in the research.

Young person's name:

Signature:

Date:

I give my consent for……..(insert young person's name) to take part in the Research Project.

Parent/guardians name:

Relationship to Young Person:

Signature:

Date:

Interview Schedule (Young People)

- **What sorts of behaviour can end up in the use of restraint?**
- **Is there bullying?**
- **Is there a lot of fighting?**
- **What starts the fights?**
- **How is behaviour managed inside?**
- **.What about for people who want to harm themselves?**
- **Are there times when young people kick off more than others?**
- **What happens when young people kick off?**
- **Are handcuffs used often?**
- **What happens afterwards?**
- **Does it make a difference if there are more staff on the unit?**

- **Do you think that it's fair using restraint?**

- **Does anyone explain what your rights are about complaints and about advocates and how you should get treated?**

Key Informants Interview Schedule

(Questions may vary depending on the role of the participant and supplementary questions may arise during the interview process)

1. Can you explain your current role?

2. What is your experience of working with young people (adapt depending on role of participants)?

3. How is the current legal & practice guidance around physical interventions being implemented? (Supplementary questions will be asked depending on the role of the respondent i.e. either specific questions about an individual organisations' own policy and practice or a respondents understanding of the overall policy framework).

4. What is your/your organisations experience of this in practice?(This may include either an overview of national practice and generic issues for lawyers/campaigners/policy makers or specific questions about an individual organisations own practice, monitoring, training etc. depending on the role/participant being interviewed).

5. Are children's human rights endorsed within your organisations working practices and, if s how?

6. How are any issues or difficulties identified, addressed and resolved by staff/young people? (this question for specific secure settings only)

7. How are young people's complaints handled within the organisation? (this question for specific secure settings only)

8. Do you consider the current use of physical interventions is appropriate? Are you aware of inappropriate use of restraint? Please say how and why you consider this to be the case? (Supplementary questions will be asked depending on the role of the respondent and the setting in which he/she works).

9. If there is a need to reduce or further reduce the use of restraint what have been or continue to be the main obstacles to this?

10. Are you aware of any good practice examples of alternative ways of managing challenging behaviour?

11. Is there anything about responding to problem behaviour, physical responses or human rights that we haven't discussed that you think I ought to take into account?

May 2013