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PRESS RELEASE

RESTRAINT OF CHILDREN IN PRISON HELD TO BE UNLAWFUL

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The Court of Appeal has held that the rules currently in force allowing children in custody to be restrained for reasons of "good order and discipline" are unlawful and must be quashed. The challenge was made in relation to amendment to the Secure Training Centre Rules¹ which were brought into force in July 2007.

The concern about the Rules stemmed in part from the deaths of Gareth Myatt - who died whilst being restrained by staff at Rainsbrook STC - and Adam Rickwood - who hung himself in Hassockfield STC - after having been restrained. These cases raised concern about the legality of the use of force in STCs and resulted in the amendments being made back in July 2007. There was widespread concern at the time that the amendments were brought in to greatly widen the circumstances in which children could be restrained, and to legalise conduct by officers which up to that date had been prohibited.

In a test case funded by the Legal Services Commission ("LSC") It was submitted on behalf of the claimant – a child who had been held in an STC – that the rules had been introduced without proper consultation, without conducting a race equality impact assessment and that they breached Articles 3 & 8 of the European

¹ STCs hold young persons in custody between the ages of 12 and 17. There are four STCs in the country.

Convention of Human Rights². The case was supported by the Children's Commissioner and a wide ranging coalition of other organisations, including the NSPCC, INQUEST and the Children's Rights Alliance.

In a decision made earlier this year the Administrative Court found that the amendments were introduced unlawfully due to the failure to properly consult and to carry out a race equality assessment but refused to quash the Rules. Today the Court of Appeal confirmed that the Rules should be quashed, not only due to the failure to consult but also because the changes breached Articles 3 and 8.

In a highly critical judgment given on behalf of the Court, Buxton LJ stated that Secretary of State had "surprisingly" not appreciated that the Rules did change the policy concerning the use of restraint quite significantly. This in turn led to a series of failings in relation to the appropriate consultations that should have taken place. He paints a picture of a youth custody system that is inconsistent and incoherent, with worrying difference of opinion between key players:

"...there is a history in the life of STCs of disobedience to legal and contractual requirements. We have seen how the Amendment Rules were introduced to legitimate practices that up to then were illegal and in breach of the operators' contracts. And Hassockfield STC is run by, and the Secretary of State relies on the evidence of, a man who before the Rickwood inquest, and in these proceedings, sought, apparently unchecked by the Secretary of State, to argue that his contractual obligations were not binding." [para 74]

The finding that the Rule authorising the use of force breached Article 3 flowed directly from the chaotic administration identified by the judge.

Mark Scott, a partner at Bhatt Murphy Solicitors acted for the child who brought the challenge as well as the families of Gareth Myatt and Adam Rickwood. He commented:

² Article 3 prohibits inhuman or degrading treatment and Article 8 protects the right to a private and family life.

“The Court has identified very clearly the dangers posed by the use of physical force to restrain children and the judgment is extremely critical of how the authorities have responded to this problem. It is difficult to understand how such a haphazard approach can be taken to the use of potentially lethal force against young people in the care of the state. Whilst my client is extremely pleased with the decision in his case, it is tragic that children have already died during or following the use of restraint in STCs.”

Debra Coles of INQUEST commented:

“This judgement is further condemnation of the failure of the state and privately run companies to protect vulnerable children in the custody and care of the state the result of which has been death, injury and psychological damage. We have heard nothing since the deaths of Adam Rickwood and Gareth Myatt that has convinced us that those with responsibility have properly heeded what has been exposed and that necessary and appropriate changes have or will now be made to safeguard children. Instead what has emerged is complacency and a reliance on a restraint review conducted behind closed doors and that the Government have refused to disclose in advance of its response, thus preventing consultation and debate, the very things criticised by this judgement.

INQUEST remain convinced that the only way to prevent the suffering of children in custody and to ensure that more children do not die or are not injured is to conduct a holistic independent inquiry in public into the way we treat children in conflict with the law with the proper involvement of families, children and those working within it. That the Government continues to resist such an inquiry whose motivation would be protecting the human rights of children is shameful.”