

## **The Prison Reform Trust's response to the consultation on the sentencing of children and young people**

I welcome the opportunity to make a submission on behalf of the Prison Reform Trust to this important consultation on the sentencing of children and young people.

This submission draws on our recent work with Lord Laming on his independent review of looked after children in the criminal justice system and the comments made by review panel members during our meeting with you and your colleagues in July 2016. Our submission is confined to consideration of the general principles and factors to be taken into account when considering the welfare of a young person, as they apply to looked after children and young people.

We believe the draft guidance is helpful and we have identified a number of ways in which it could be improved to ensure that sentencers take full account of the welfare of looked after children and young people appearing before them.

### **The Prison Reform Trust**

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective penal system. It does this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.

### **Lord Laming's review of looked after children in the criminal justice system**

In April 2015, Lord Laming accepted the Prison Reform Trust's invitation to chair an independent review of looked after children in the criminal justice system, 'Keeping children in care out of trouble'. The review was launched in June 2015 with the initial support of the J Paul Getty Junior Trust. Its central question was:

*“to consider the over representation of children in care, or with experience of care, in the youth justice system - why, for example, when only fewer than 1% of children and young people are committed to the care of local authorities, yet a third of boys and 61% of girls in custody are, or have been, in care<sup>1</sup> - and to make recommendations as to how the life opportunities for children and young people in care or with experience of care, who are at risk of being avoidably drawn into the youth justice system, can be transformed.”*

The review's primary aim has been to spread good practice in order to prevent looked after children being needlessly drawn into the criminal justice system. Lord Laming has worked with a review panel formed from a broad cross-section of senior policymakers and practitioners, including

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<sup>1</sup> Kennedy, E. (2013) Children and Young People in Custody 2012-13: An analysis of 15-18-year-olds' perceptions of their experiences in young offender institutions, London: HM Inspectorate of Prisons and Youth Justice Board.

social workers, police, magistrates, academics and other experts, as well as children and young people who have been in care and been in trouble with the law. During the 11-month review process, over 220 written submissions were received from a wide range of agencies, as well as individuals with personal or professional experience of care and the criminal justice system, and many meetings, visits and oral evidence sessions took place. Lord Laming's findings and recommendations were published in May 2016 in a summary report together with a literature review by Dr Jo Staines of the Hadley Centre for Adoption and Foster Care Studies. The review's full report was published earlier this month, containing a detailed account of the review submissions, a discussion of the context and analysis of relevant data, as well as good practice examples and individual stories. All these publications can be downloaded via the links below or at: [www.prisonreformtrust.org.uk/carereview](http://www.prisonreformtrust.org.uk/carereview)

## **Review publications**

[In Care, Out of Trouble - full report](#)

[In Care, Out of Trouble - summary report](#)

[Mewn Gofal, Allan o Drwbwl - Welsh translation of the summary report](#)

[Risk, adverse influence and criminalisation: Understanding the over representation of looked after children in the criminal justice system, a literature review by Dr Jo Staines, Hadley Centre for Adoption and Foster Care Studies, School for Policy Studies, University of Bristol](#)

## **Review findings in summary**

Lord Laming found, in summary, that:

(a) The protection of children in care from criminalisation is still not sufficiently prioritised at national or local level. Statutory guidance gives many of the protections that are needed, but it is not consistently followed and there are areas in which it could be strengthened. The commitment of local agencies to work closely together to protect children in care from being drawn needlessly into the criminal justice system, while strong in some places, is inconsistent across England and Wales. Strong, sustained leadership at national and local level is needed to achieve results.

(b) Deficiencies in data mean we do not know the extent of the problem and this undermines progress. Data collection needs to be improved in order to meet children and young people's needs and effectively protect them from criminalisation.

(c) Data deficiencies are particularly acute for looked after children and young people in minority groups, in respect of whom there is evidence of additional and particular needs which are not being met. Children and young people who are black or from other minority ethnic backgrounds are over represented in the criminal justice system. This is reflected amongst looked after children and young people as well as those in the general population. Some young people from minority ethnic backgrounds told the review that they felt discriminated against, particularly by the police. Too little is known about the experience of girls and Muslim young people in care and the criminal justice system. Children with mental health needs are not receiving timely and effective support. There is too little awareness and support available for those with learning difficulties and disabilities, and speech, language and communication needs.

(d) Foreign national children in care and victims of trafficking require better protection from criminalisation and its consequences. The particular needs of unaccompanied asylum seeking children for protection from criminalisation are not examined in Lord Laming's report. Given the recent, significant increases in reception of such children in some local authorities, with planned dispersal across England and Wales, this requires further study.

(e) Effective early help services and good parenting by the state have a central role to play in protecting children in care, and on the edge of care, from being drawn needlessly into the criminal justice system. Parent local authorities must sustain and develop effective services, with a specific focus on protecting children in care from criminalisation, and central government should

support them in doing so. This should include ensuring that each looked after child has a positive relationship with his or her primary carer and at least one other trusted adult and promoting the quality and stability of care placements. It is essential for foster carers and residential care staff to be trained and supported to engage with children and young people in a positive, understanding and respectful way, using formal and informal approaches to build relationships and a sense of community, support social development and respond effectively to challenging behaviour, and avoiding formal criminal justice processes wherever possible. Adoptive parents have told the review that ongoing, post-adoption support is key.

(f) By working closely together in a well organised way, with common goals and clear and regular channels of communication, and raising awareness in all agencies about the needs and characteristics of looked after children, progress can be made to prevent behaviour that could lead to trouble, to divert looked after children from the criminal justice system wherever possible and, where this is not possible, support looked after children through the system and ensure they are fairly treated. All professionals working with looked after children should understand how to engage effectively with them, treat them with respect and understanding and ensure they are fully informed and able to participate in matters affecting them.

(g) Leaving care is well known to be a time of great vulnerability and risk, and more must be done to protect young people at this critical stage in their lives, with support both emotional and practical. This will play a fundamental role in protecting young people leaving care from criminalisation.

Lord Laming makes wide-ranging recommendations for change, calling for strong leadership from central and local government and all organisations concerned with looked after children and the criminal justice system.

### **Your consultation - Overarching principles**

Sentencers play a critical role in young people's experience of the criminal justice system and sentencing decisions can have a profound impact on children and young people's future life chances. The sentencing process relies to a great extent on the provision of information to the court by outside agencies, as well as the provision of support to children and young people facing proceedings. Lord Laming's review found failings in the adequacy of such information and support where looked after children are concerned, with many submissions from magistrates expressing frustration that they lack information on which to base sentencing decisions about looked after children, and that children in such circumstances often appear unaccompanied or with inadequate support. Children and young people told the review that they think it should be compulsory for social workers to accompany them at court hearings.

While such matters may be beyond the remit of the draft guidance, they nonetheless indicate the context in which sentencing decisions are often made about looked after children and young people, as well as young care leavers. Consideration should be given to how the guidance might support sentencers in reacting to such circumstances so as to ensure looked after children and young people, and young care leavers, are treated fairly with due regard to their welfare, including those from minority groups.

The Prison Reform Trust welcomes the express recognition within the draft guidance of the need to avoid criminalising children and young people unnecessarily, as well as the importance of bearing in mind factors which may diminish their culpability, and the potential impact of sentencing on children and young people's future lives. These are all factors which may have particular importance for looked after children and young people and young care leavers.

The draft guidance rightly sets out matters to be taken into account when considering the welfare of a young person being sentenced, including many which are prevalent for looked after children and young people, such as mental health problems and speech, language and communication needs. The possible impact of a custodial sentence on a child's ability to accrue leaving care rights should also be taken into account, as explained in the Howard League for Penal Reform's

submission to this consultation. The experience of being looked after, and the over representation of looked after children in the criminal justice system, is specifically mentioned at paragraph 1.13 of the draft guidance and this is helpful and important. Information should be added about the disproportionate numbers of looked after children and young people in the criminal justice system.

Sentencers are advised at paragraph 1.14 to ensure that they have access to information about how best to identify and respond to factors relevant to a child's welfare and, where necessary, to ensure a proper assessment has taken place to enable the most appropriate sentence to be imposed. We agree with this advice and we believe it is important to ensure that the sentencers take full account of the particular circumstances of looked after children and young people, and young care leavers, when considering their welfare.

We would add the following further points, pursuant to our meeting on 7 July 2016:

- In order to ensure that sentencers take full account of the welfare of children and young people, it is essential that they should be referred to in the guidance as children and young people, rather than 'offenders' or 'youths'.
- The draft guidance does not take account of care leavers aged 16 to 18 years and the difficulties of this transition. Sentencers should be alerted to the difficulties faced by care leavers.
- In order to influence culture and attitudes, the guidance must be in a form that can be referred to constantly by sentencers. We therefore welcome the Sentencing Council's commitment to consolidating the guidance and making it more user-friendly.
- Sentencers should be reminded of the need for proportionate sentencing, in order to avoid the risk of disproportionate sentencing taking place in an attempt to ensure that children and young people's needs are met.
- There was some concern amongst panel members at the mention in the guidance of deterrence at paragraph 1.9. This highlights the unsatisfactory position arising from the fact that this legislation has not been brought into effect. Deterrence, which is accepted to have a limited effect generally given the impulsivity of offending behaviour, is likely to be particularly ineffective in relation to children and young people. Sentencers should be encouraged to apply the guidelines based on the intentions of Parliament, in other words without making deterrence a factor.
- Mental health needs and speech, language and communication needs must be identified well before the sentencing decision. Sentencers must be prepared to adjourn for expert assistance if they have a concern that such needs exist and have not been identified or the child or young person is not being adequately supported to understand the judicial process.
- Where sentencers are faced with an offence by a looked after young person which it appears would not have come to court if it had been committed in a private family home, this should be taken into account in sentencing and should also be followed up more generally with the local crown prosecution service with a view to improving local practice.
- Sentencers will generally consider a child or young person's previous offences when deciding on an appropriate sentence. However, while a list of previous convictions can on paper appear to constitute an aggravating factor, on learning the facts behind such cases this impression can turn out to be misleading. For example, one young person in a children's home told the review that she had been convicted of criminal damage for throwing a cup against a wall in frustration. Consideration should be given to whether sentencers could be provided with more information about the nature of previous convictions, including cases where a looked after child may have been convicted of an

offence in circumstances which would not have led to criminal proceedings if the incident had occurred in a private family home.

- Children and young people who are black or from other minority ethnic groups, including looked after children and those in the general population, are over represented in the criminal justice system and particularly in custody. The Sentencing Council should therefore give particular consideration to how the guidance might help to ensure children from these groups are treated fairly by sentencers.
- The guidance should take account of the particular circumstances of young people who are parents or expectant parents.
- Pre-court disposals should not be taken into account for young people as evidence of persistence.

I would be happy to provide any further information that may be helpful to this consultation.

Yours sincerely

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