



In Care, Out of Trouble

How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system

An independent review chaired by Lord Laming

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Cover image: *Locked in Rainbows*, Atkinson Secure Unit (Secure Children's Home), Pierce Brunt Highly Commended Award for Drawing (Koestler Trust)

ISBN: 978-1-908504-92-0

Printed by: Conquest Litho

Foreword

Since July 2013 I have been to 16 schools and I have been in 15 different placements all around the country ... All of my offending has been whilst in care.

Young review panel member, aged 15 years, 25 June 2015¹

These children are in our care; we, the state, are their parents – and what are we setting them up for...the dole, the streets, an early grave? I tell you: this shames our country and we will put it right.

The Rt. Hon. David Cameron MP, Prime Minister, October 2015²

This review was established to examine the reasons for, and how best to tackle, the over representation of children in care, or with experience of care, in the criminal justice system in England and Wales.

Aiming to reduce the disproportionate number of young people who are, or have been, in public care progressing into custody is laudable. The over representation of looked after children in the youth justice system has to be challenged and changed. But it soon becomes distressingly clear that starting at the point of evidence of criminal behaviour is for many young people simply too late in the day. Remedial work and rehabilitation are essential but prevention is so much more rewarding and fruitful for the young person and wider society. It is against that background that it would be good to pause and reflect again on the importance of childhood in the social and emotional development of every young person.

Good parenting entails a lifetime commitment. It creates the solid foundation on which is built the evolving unique personality that, hopefully, will in due course become the fulfilled adult. The essential ingredients are security, stability, unselfish love and an unyielding commitment to give the child the best start and hope for the future. It is in this context that young children develop self confidence, trust, personal and social values and optimism. Loss, neglect or trauma at this early stage in life often result in profound and enduring consequences.

Great emphasis should be placed on early life experiences. Guidance and support through pregnancy and during the early months of parenthood should be available to all who need it. There are clear long term benefits in identifying problems at an early stage rather than delaying until a crisis. It is in all of our interests that as many children as possible are enabled to grow up to become successful, law abiding and fulfilled citizens well able to be good role models for the next generation. We all have a part to play in this, but especially the wider family. At times of difficulty steps should be taken to involve other family members and encourage their different contributions and support. Handled in the right way a crisis might be short-lived and stability restored. After all, this is a well trodden path in many families without the assistance of the state. This can be hugely satisfying work for frontline staff. Working in this way in some local authorities has already resulted in fewer children coming into care.

Investing in childhood is more than a nice thing to do. It has a real value that goes beyond the child as it facilitates the future wellbeing of society. Failure to help the child and, where possible, to support the family at this stage is both costly to the child and very expensive to the state. In every way the price is high for everyone involved. In financial terms it costs over £200,000 each year to keep a young person in a secure children's home and the yearly cost of a place in a young offender institution is about £60,000.

Meeting many young people in custodial institutions demonstrates all too clearly the gaps in their social development and in their basic education. It is impossible not to be moved by their experiences and the serious constraints on their life chances. For some, their anger, frustrations, inability to express themselves except through challenging behaviour and possibly violence all point to failure, for whatever reason, in their earlier years. Yet with the right help at the right time, the capacity of many children to change and their resilience in difficult circumstances is admirable.

The staff in these establishments need to be equipped to demonstrate a mixture of sound professional skills and impressive personal qualities. They deserve good training, proper supervision and support. We should honour what they do on behalf of us all not least because few of us, including me, would choose to take on such challenging and at times distressing work. Remedial work can be tough, demanding and at times dispiriting. But this review has heard how good practice can achieve inspiring results.

What is abundantly clear is that no one service operating alone can hope to meet the needs of these young people or their families. Each one of the key public services has a distinct and clear responsibility in law to fulfil the duties placed upon them by the United Kingdom Parliament and the Welsh Assembly. One of those duties is to work in partnership with each of the other services. Over the years there have been far too many well publicised examples of services failing to work across organisational boundaries both in the exchange of information and in day by day practice in the protection and support of vulnerable children. We have seen and heard of excellent joint working and co-located teams in places such as Leeds and Surrey to divert looked after children from unnecessary criminalisation. Good practice is achieving splendid results in other areas too. Now is the time to make it standard practice everywhere.

Surely the time has come when it should be made clear that the performance of the most senior officers, and their tenure, should be judged against the quality and effectiveness of the work for children, not least in the success of the good collaboration between different services. This is not to imply that senior managers can know each child in public care. But they must be expected to have put in place robust and effective quality standards and fail-safe mechanisms so that a possible service failure and drift are identified and corrected speedily. For example in Leeds, senior staff in each of the key services get a weekly report on data such as the numbers of children not in school, admitted to care, or in custodial settings. Ofsted has recently assessed three London boroughs as outstanding.

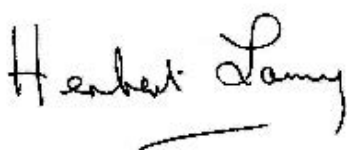
I am indebted to my expert panel for their work in shaping and contributing to this review. In particular I should like to commend the work of young members of the panel whose insights and preparedness to draw on their own experiences of being in care and their involvement with the criminal justice system have informed the review from the start. It is against that background that we make the recommendations for change which are set out in this report.

These are the outcomes we wish to see:

- The work must be driven by strong and determined leadership at national and local levels, taking a strategic multi-agency approach to protecting children in care against criminalisation. This needs to be underpinned by better data collection so as to improve services for children and families, especially those at risk.
- We want to see consistent, early support for children and families and, where necessary, good parenting by the state.
- It is important to investigate and address the needs of minority groups of looked after children who are at risk of involvement in the criminal justice system.
- There must be more effective joint working between families, local authorities, youth offending services, child and adolescent mental health services, the police and other criminal justice agencies leading to substantially improved opportunities for preventing the criminalisation of looked after children and diverting them from the criminal justice system wherever possible. Where this cannot be done, looked after children deserve proper support and fair treatment throughout the criminal justice process.
- Lastly, young people leaving care are vulnerable and must have more consistent support.

The aims of this report will command widespread support. We have outlined the steps to be taken, and by whom, to effect the necessary improvements.

We should be impatient of poor practice that puts at risk the safety of children and undermines their life chances. The organisational model is secondary to the achieved results. Good results are being demonstrated in authorities that have a shared vision, clear ambitions and a rigorous commitment to enabling vulnerable children to achieve much. There is no reason why proven good practice cannot now be standard practice everywhere.

A handwritten signature in black ink that reads "Herbert Laming". The signature is written in a cursive style with a horizontal line underneath the name.

The Rt. Hon. the Lord Laming CBE DL

Summary of findings and recommendations

Introduction

When the state takes over the parenting of someone else's child, it has both a legal and moral responsibility to be a good parent. Quite often this will require determined effort to remedy the inadequacies or serious failure of the earlier parenting experienced by the young person. These failures, for whatever reason they arise, can result in profound deficiencies, be they in education, social skills or personal development. Remedial work depends not only on the skills but also the commitment, ambition and determination of the staff, the carers and possibly the members of the wider family.

This report is aimed at encouraging good practice and ensuring that sound quality standards become the everyday experience for each and every child who has to depend upon the state for their safety, their proper development and their confidence in their future. Although the task demands much of everyone involved with each young person it is, nevertheless, both essential and potentially most rewarding for both the young person and the state. Drift is the enemy of the good in the life of a young person. Failure is costly both in personal terms and for the state.

This report demonstrates just what can be achieved, given a clear vision, a commitment to timely joint working across the key agencies and a belief in the unique value of each child.

The good news is that it is being done in some areas. The least we can do is have this ambition for each child in our care.

Tackling the over-representation of looked after children in the criminal justice system

Around half of the children currently in custody in England and Wales have been in care at some point. At the very least, that tells us that we are missing opportunities to turn young lives around, and prevent future crime.

This report describes practical steps to take those opportunities. It is based on what we have been told by young people who know the system from the inside, the experience of professionals in many agencies who care for them, a unique survey of local authorities and fresh analysis of relevant statistical and research evidence.³

What we have found:

- 94% of looked after children in England and Wales do not get into trouble with the law
- Nonetheless, children in care are significantly over represented in the criminal justice system and in custody, where many have a particularly poor experience
- Children in care who are at risk of offending need consistent emotional and practical support from their carers and other professionals and are likely to be especially vulnerable when they leave care.

Young people with experience of care and the criminal justice system have told us that:

- Separation from their birth family understandably hurts and the care system must do more to help them come to terms with this

- Frequent changes in who looks after them, where they live, where they go to school and who offers emotional and practical support damage their prospects
- Support from peer mentors would help
- Clarity about what they can expect from the care system is crucial, as is involvement in decisions that affect their lives
- They often feel isolated and unsupported at critical moments, not least if they have to appear in court or spend time in custody
- Some young people from minority ethnic backgrounds feel they are subject to negative stereotyping on the grounds of their race, particularly by the police, and that their cultural needs are not consistently met by children's social care services.

But we have also found that:

- The rate at which a minority of children move from care into the criminal justice system is not inevitable. It can be reduced - for example by as much as 45% over four years in Surrey, as a result of effective local practice;
- Good practice can dramatically reduce the long term costs that arise when young people get sucked into the criminal justice system unnecessarily - one study calculated a return of £3.41 for every £1 invested.⁴

What we recommend

The review's findings and recommendations are the product of a year's intensive inquiry and are intended for practitioners as well as policy makers. The review had the benefit of a broad advisory panel including leading experts in the field, experienced practitioners and, above all, children and young people with first-hand experience of care and the criminal justice system.

Over 220 written submissions, a number of oral evidence sessions, meetings and visits provided an extraordinary wealth of experience and opinion on which to draw. These are referred to in detail in the full review report and, where permission is given, will be published on the Prison Reform Trust website following the report launch. We also commissioned a literature review by Dr Jo Staines of the Hadley Centre for Adoption and Foster Care Studies which summarises current domestic and international research about the criminalisation of looked after children and young people.

The full review report and the literature review can be downloaded from the Prison Reform Trust website: www.prisonreformtrust.org.uk/careview

The Prime Minister's personal commitment to transform the life chances of children in care, and the concurrent reviews commissioned by the UK government into residential care and the treatment of young people in custody make this a critical time to listen to the voices within this report. A coherent programme of reform, led from the very top, has the opportunity to turn both the Prime Minister's and the Welsh Government's vision into reality.

This executive summary sets out the practical action that we believe is required to give children in care the protection they need and deserve from being needlessly drawn into the criminal justice system. Our findings and recommendations, grouped under six outcomes we would like to see, are as follows:

Outcome One: Strong and determined leadership at national and local level drives a strategic, multi-agency approach to protecting children in care from criminalisation

We need to make every effort to avoid the unnecessary criminalisation of children in care, making sure that the criminal justice system is not used for resolving issues that would ordinarily fit under the umbrella of parenting. We need to work with our partners to improve our understanding of the child in care to improve outcomes for them.

National Police Chiefs' Council, 2015⁵

It is essential that all councillors understand and contribute to the duty to safeguard and promote the welfare and education of children and young people looked after and to promote their achievements and raise their aspirations.

Former head teacher⁶

Looked after children are significantly over-represented in the criminal justice system. This is a national problem which central and local government, and local criminal justice agencies, can and must do more to address. Reductions in the rate at which children in care are criminalised will not happen by accident. It takes leadership nationally and locally, a commitment to good practice, effective joint working and operations and performance measurement founded on reliable data.

There is considerable existing provision in statutory guidance for local authorities which should protect looked after children from criminalisation, but compliance is not consistent and there are areas in which the guidance must be strengthened. Crown Prosecution Service guidance on the treatment of looked after children is helpful but is again inconsistently applied, and should be extended. There is limited guidance for the police although the National Police Chiefs Council is providing leadership. Where joint working protocols exist between local agencies, they are not always followed.

We therefore make the following recommendations.

Recommendation 1 – Provide national leadership

We recommend the formation of a cabinet sub-committee (England), or equivalent body (Wales), to provide national leadership in protecting looked after children and young people from unnecessary criminalisation by ensuring there is good joint working, proper regulation and policy development across UK government departments, and across the Welsh Government, to act as an example to local government services, and by:⁷

1.1 Commissioning and disseminating a cross-departmental concordat on protecting looked after children from criminalisation, to reinforce the statutory obligations of all relevant agencies and highlight the need for joint action:⁸

(a) Each concordat should require local authorities, police and other relevant agencies to set and deliver locally agreed outcomes to reduce the criminalisation of, and offending by, children and young people in care;

(b) Both concordats should be developed within one year. Within the same period, any corresponding amendments required to statutory guidance should be identified and put in place. There should be a further two year period for implementation followed by regular review. Each concordat should be guided by the principles set out in Appendix One (p21).

1.2 Ensuring that common standards are set for the collection, analysis and publication of data about children and young people in the criminal justice system who are or have been in care so that we can all be better informed about their needs;

1.3 Ensuring inspection measures and assessments of performance are set that address criminalisation, in particular:

(a) Inspections of local authorities, children's homes and schools by the relevant inspectorates should specifically measure performance based on the level of involvement of their looked after children with the criminal justice system and the consistency of local authority support for looked after children who become involved with the criminal justice system, and should routinely report on this.⁹ In the case of local authorities this should include, for example, asking in advance of inspections how many times the police have been called out in the previous 12 months in relation to the behaviour in a care home of any child looked after by that local authority. In the case of inspections of individual care homes, advance information should be requested concerning the number of police call outs in the previous 12 months in relation to the behaviour of any child in that care home.

(b) Inspections of youth justice services by the relevant inspectorates covering health, children's social care, education and training should also specifically measure performance based on outcomes for looked after children.

1.4 Ensuring the convergence of information systems running between children's social care and youth justice services both in England and Wales.

1.5 Ensuring that the newly proposed authoritative body for children's social care in England, based on the 'What works' model¹⁰, works alongside the Youth Justice Board for England and Wales to disseminate information about leading practice in protecting children in care, and those on the edge of care, against criminalisation; and that in Wales consideration is given to the development of similar arrangements.

Recommendation 2 – Achieve consistent police practice

We recommend that the Home Office should:

2.1 Advocate the adoption and implementation of regional police protocols throughout England and Wales to reduce the prosecution of children and young people in care, modelled on the South East England and Gwent protocols;

2.2 As proposed by the All-Party Parliamentary Group for Children¹¹, review the Home Office Counting Rules and develop a new outcome, allowing police forces to record low-level, crime-related behaviour by children and young people in a way that ensures referral to a welfare agency to address the behaviour, does not create a criminal record and cannot be disclosed by an enhanced Disclosure and Barring Service check;

- 2.3 In consultation with the Department for Education and the Welsh Government, commission and publish a crime recording protocol for incidents in children's care homes, similar to the protocol in operation for schools; and
- 2.4 Require police and crime commissioners to set clear expectations for police forces to work in collaboration with local authorities and other agencies to protect children in care from unnecessary criminalisation. Police and crime commissioners should take account of the needs and circumstances of looked after children when commissioning services to reduce crime in their local area.

Outcome Two: The important role of early support for children and families at risk is recognised

When I was two years old my Dad left and it messed my Mum's head up. I've been in care since I was nine or ten. I first went into care when my Mum hospitalised my little sister, due to mental health.

Young person aged 15 years

...natural parenting needs to be much more highly valued than it often is, with the recognition that this is a demanding vocation.

Former social worker¹²

...please look more at what happens to cause children to be brought into care in the first place. For example, at the research into Foetal Alcohol Syndrome Disorder and Attachment Disorder, brain-based development and the lasting psychological effects of neglect and abuse and rape.

Registered social worker¹³

For nearly two-thirds of children in care, the main reason they are looked after is that they have suffered abuse or neglect. Early support for children and families plays an important part in protecting children and young people in care, and those on the edge of care, against criminalisation. The economic benefits of effective early support services have been established by the Early Intervention Foundation. Support for adoptive parents is also critical. Central and local government must work together to ensure that this essential work is sustained and developed.

Recommendation 3 – Provide early support for children and families at risk

We recommend that each concordat on protecting looked after children from criminalisation (see recommendation 1) should explicitly recognise the important role that early support for children and families plays in protecting children and young people in care, and those on the edge of care, against criminalisation. This should include commitments by central and local government to work together to ensure that early support services aimed at protecting children and young people from maltreatment, neglect and inadequate parenting are sustained and developed.

Outcome Three: Good parenting by the state gives children in care the chance to thrive and protects them from criminalisation

...the care system...truly saved my life.

Young woman with experience of care and the criminal justice system¹⁴

Care needs to mean care. A child in the care of the state should be given the best possible home environment... I am sure there are individual examples of excellent care ... but overall the state is failing children who have already been failed by their families. We fail to give them good quality family care and we punish them when they misbehave... Send them out of the care system with a criminal record and their future burden on society is assured.

Retired magistrate and school governor¹⁵

As professionals, we have to make damn sure that we replace or rebuild the family relationships that we are disrupting.

Isabelle Trowler, Chief Social Worker for Children & Families in England, oral evidence, 10/09/15

In this review we examined the role that good parenting by the state (described in the Children Act 1989 guidance and regulations as ‘corporate parenting’) has to play in protecting children and young people in care from criminalisation. Many of the priority areas we identify are covered by the Children Act 1989¹⁶ guidance and regulations and by the regulations and codes of practice issued under the Social Services and Well-being (Wales) Act 2014. However, evidence received by the review has highlighted that compliance is not consistent. The guidance is generally sound, although there are areas in which it should be strengthened. However the guidance is not an end in itself and will only have the required impact when it is put into practice everywhere at local level. In this section we propose amendments to the guidance and recommend that key provisions should be reinforced by inclusion within the concordat on protecting looked after children from criminalisation (see recommendation 1).

Recommendation 4 – Strengthen local authority leadership

We recommend that the following measures be introduced to strengthen local authority leadership to protect looked after children from unnecessary criminalisation. All these measures could be implemented, in England, by amendments to the Children Act 1989 guidance and regulations (that are next to be reviewed in April 2017), and in Wales by amendments to the codes of practice issued on the exercise of social services functions and partnership arrangements in relation to the Social Services and Well-being (Wales) Act 2014:

4.1 Statutory guidance must assert the important role of the local authority in tackling the stigma which children in care can encounter, as identified by research and in this review.¹⁷ The guidance must make clear that local authorities should raise awareness amongst local partner agencies and others about the needs, circumstances and characteristics of looked after children and challenge negative stereotypes. This is critical to enabling children to achieve the ‘wide range of opportunities to develop their talents and skills in order to have an enjoyable childhood and successful adult life’ for example, as referred to in the Children Act guidance and regulations, and protecting them from needless involvement in the criminal justice system.

4.2 Statutory guidance must -

(a) Require local authorities to hold regular senior-level, strategic meetings with their multi-agency partners with the common aim of improving outcomes for looked after children, including protecting them from criminalisation. This must provide a commitment to share information, promote good practice and make joint decisions about matters affecting looked after children locally.

(b) Describe a range of activities that local authorities and their partners must routinely carry out in fulfilment of their responsibilities for parenting, including a requirement that:

(i) Directors of children's or social services must receive regular, accurate information about the progress of all children from entry into care and specifically the involvement in the criminal justice system of looked after children for whom they are responsible. Directors of children's or social services should summarise this information as part of their regular reporting to lead members for children's services.

(ii) Directors of children's or social services must ensure that their department has a close working relationship, including fast and effective channels of communication, with local criminal justice agencies (youth justice services, the police, the Crown Prosecution Service, the courts and secure establishments) with the common aim of ensuring that looked after children are protected from unnecessary criminalisation wherever possible and, where this is not possible, that they are well supported and fairly treated within the criminal justice system. This must include ensuring that their department informs local criminal justice agencies promptly when they are working with a looked after child, provides information about the child's circumstances and any vulnerabilities, and that the department provides the necessary support to that child to help achieve diversion from the criminal justice system where possible and, where this is not possible, to support the child throughout the criminal justice process.

4.3 Local authorities must be required to:

(a) Recruit, train and support young adults who have experience of the care system to act as peer mentors and positive role models to children and young people in care. This reflects a clear consensus among young people who told this review that this kind of support would have given them valuable emotional and practical support and helped them to make better choices.

(b) Carry out a rigorous review when any looked after child experiences three or more placement moves within 12 months and where any placement move arises following a police call-out in relation to that child's behaviour, in order to learn why this happened and how it can be avoided in future, and that the results of such reviews are regularly reported to the lead members for children's services.

4.4 All bodies in Wales whom we consulted expressed concern about the high number of out of authority placements there by English authorities. The evidence suggests that many of these placements lack effective planning and information sharing, and that these factors can contribute to the criminalisation of looked after children. We therefore recommend that English statutory guidance must be amended to incorporate the requirements specified in the Code of Practice (No. 6) issued in relation to the Social Services and Well-being (Wales) Act 2014.

Recommendation 5 – Improve joint working between children’s social care and social services, and criminal justice agencies

We recommend that the following measures must be implemented in England to improve joint working for the protection of children in care from needless criminalisation. This can be done through amendments to Section 8 of Volume 2 of the Children Act 1989 guidance and regulations when it is next reviewed in April 2017:

- 5.1 Local authorities must hold a regular, formal panel meeting with the local police force and other partners to review the circumstances of each looked after child at the first indication that they may have begun to offend, so that early, purposeful diversion from the criminal justice system can be put in place. This should include appropriate sharing of information and joint decision making wherever possible.
- 5.2 Local authorities must put in place resources, including training and support through practitioner forums, to ensure that carers in all placements are able to support children’s social development and respond to challenging behaviour without involving the police formally. This has been done successfully in some areas through the use of restorative practice (see page 28).¹⁸
- 5.3 All children’s homes, whether independent or publicly run, must be required to develop and implement a protocol with their local police force, in consultation with children’s social care services, to minimise formal police involvement in managing children’s behaviour. The protocol’s operation must be monitored by the director of children’s services and the lead member for children’s services.
- 5.4 Local authorities must always notify criminal justice agencies promptly (youth justice services, the police, the Crown Prosecution Service, the courts, and custodial establishments) when a looked after child comes into contact with the criminal justice system.
- 5.5 Where a looked after child is arrested, the local authority must ensure within a reasonable time that the child has support at the police station from an appropriate adult who knows them, who understands their role and is able to carry it out, and who has no conflict of interest in relation to the proceedings against the child.
- 5.6 Where a looked after child appears in court, it should be a requirement for the child’s social worker to attend court with the child (rather than simply good practice, as currently stated at paragraph 8.41 of the guidance). Where the social worker does not know the child well, another adult must also attend who does know the child, such as a carer or family

member, provided that this is safe and in the child's best interests, and in accordance with the child's wishes and feelings.

- 5.7 There must be short time limits within which information about a looked after child must be communicated to other agencies at each stage of the criminal justice process, including when a looked after child is placed in a custodial setting.
- 5.8 Resettlement planning must be completed 21 days before a looked after child's release from custody (increasing the current time limit of 10 working days) when the period of time in custody allows this. The governing governor, director or head of the secure establishment must notify the director of children's services when resettlement planning has not been completed within this time period.
- 5.9 Every effort must be made by the local authority to facilitate family support for the child at all stages of the criminal justice process where this is safe and in the child's best interests, and in accordance with the child's wishes and feelings.

We recommend that similar measures be adopted in Wales to complement the existing codes of practice issued in respect of Parts 6, 9 and 11 of the Social Services and Well-being (Wales) Act 2014.

Recommendation 6 – Recognise the important role of good parenting by the state

We recommend that each concordat on protecting looked after children from criminalisation (recommendation 1) should explicitly recognise the important role that good parenting by the state plays in protecting children and young people in care against criminalisation. This must include reinforcement of the need for local authorities to take the steps set out below:

- 6.1 Ensure that each child in care is treated with respect and understanding, is fully informed and engaged in matters that affect their lives, and receives consistent emotional and practical support from their primary carer and at least one other trusted adult. This may be a social worker, Independent Visitor or other professional or volunteer.
- 6.2 Ensure that each child in care is supported in developing and sustaining positive relationships with their family members where this is safe, in the child's best interests, and in accordance with the child's wishes and feelings.
- 6.3 Facilitate and support peer mentoring of children and young people in care by young adults who have experience of the care system and can act as positive role models.
- 6.4 Ensure that appropriate responses are made to challenging behaviour without unnecessarily involving the police. The police and youth justice services also have a role to play here.
- 6.5 Ensure that suitable care placements are available locally to meet local need and placement choices are made in consultation with children and young people.
- 6.6 Ensure that a rigorous review takes place where any child experiences three or more placement moves within 12 months, and where any placement move arises following a

police call out in relation to that child's behaviour in order to learn why this happened and how it can be avoided in future, and that the results of such reviews are regularly reported to the lead member for children's services.

- 6.7 Ensure that foster carers and residential care staff have sufficient training and support to promote children's social development, to respond to challenging behaviour without inappropriately involving the police, and to improve placement stability. This has been done successfully in some areas through restorative practice (see page 28).
- 6.8 Ensure that looked after children and young people are effectively supported to thrive in their education and other constructive activities. This must include training for all teachers about the additional needs that looked after children can have, as part of their core teacher training.
- 6.9 In relation to the mental health and emotional wellbeing of looked after children, we recommend that:
- (a) All children should be assessed by a mental health professional upon entering care;
 - (b) There should be a presumption that looked after children and young people are given first priority for mental health services until they have been fully assessed, after which point priority should be determined based on clinical need. This should be an essential element of all contracts through which child and adolescent mental health services are commissioned, and monitoring the numbers of referrals and time to first assessment should be part of the contract monitoring process.

Outcome Four: Needs and characteristics of looked after children in minority groups are taken into account in protecting them from criminalisation

Not enough is known about the relationship between the involvement of looked after children and young people in the criminal justice system and their ethnicity, faith, gender or disability. Action is needed by all relevant agencies in order to fulfil their obligations under equality law and give looked after children in minority groups the particular protection from criminalisation that they need and deserve.

Children from minority ethnic groups

Looked after children and young people who are black or from other minority ethnic backgrounds, and children and young people of Muslim faith, are over-represented in the criminal justice system and some minority ethnic young people feel discriminated against, particularly by the police:

You are just not given a chance on the outside as a young black man - you are always judged negatively.

Young person in custody with experience of care¹⁹

... Muslim young people suffer from negative stereotyping in society, the media, government policy and legislation... Those in care and the youth justice system are likely to be impacted by such stereotyping throughout their lives, before entering, during engagement in, and following exit from, care and/or the youth justice system.

Imkaan²⁰

Girls

There are concerns about the extent to which the needs of looked after girls are addressed in the criminal justice system because they represent a very small proportion of the whole. Negative stereotyping on the basis of care status and involvement in offending may be compounded as a result of their gender and girls have told us they feel they are not taken seriously as victims of crime:

I feel like we have a double standard, it's not just with the police or social services, with the whole public sector... Like the police, if I'm in trouble or whatever, they'll come there super quick, they bug me, they'll run me down, they'll call me names... Then, when I got robbed and called them, they were very willy-nilly...there was never an explanation of what actions exactly they were going to take.

Young woman with experience of care and the criminal justice system²¹

Children with disabilities, learning difficulties and speech, language and communication needs

Children and young people with developmental disabilities and disorders, learning disabilities, learning difficulties and speech, language and communication needs are known to be over-represented in care and the criminal justice system. Evidence to the review suggests that not enough is being done to identify such conditions and needs at an early stage and to ensure they are addressed in order to support children's development and protect them from criminalisation and the risk of unfair treatment within the criminal justice system:

The lack of understanding about how [ADHD, ASD and Learning Disability], in particular ADHD can contribute towards both children coming into care and into custody – is grossly overlooked....

Consultant child and adolescent psychiatrist²²

Foreign national children

Submissions to the review reveal that local services may struggle to meet the mental health needs of asylum seeking children who have experienced extreme trauma and violence. This is likely to be an increasing challenge for local authorities receiving unaccompanied children fleeing conflict in the Middle East. There appears to be a lack of support for looked after children in resolving problems with their immigration status. The review has also been told of unfairness in proceedings to deport foreign nationals due to criminality, where little or no account has been taken of the care background of the person subject to deportation:

Our view is not that the fact of [our client] being brought up in care should be determinative of the issue as to his deportation, but that having been brought up in care the Tribunal should have taken cognisance of that as a contributory factor to his criminality, and attached some weight to that fact.

Furthermore, he had already suffered a traumatic upbringing it seems even before he came to the UK, and that should have been recognised by social services, in order that his particular needs were appropriately addressed.

Solicitors' firm²³

Child victims of trafficking

We have received reports that looked after children who are victims of trafficking continue to be prosecuted in this country despite legal protections and, as acknowledged by the National Police Chiefs' Council and Home Office, regularly go missing from local authority care and are trafficked again. ECPAT UK reports that professionals across the criminal justice system are unaware of the problem, have a poor understanding of trafficking and little knowledge of how to engage with this group. Their concerns are echoed by a solicitor specialising in representing child trafficking victims:

...In the UK we continue to criminalise exploited and trafficked minors, despite having legal protections ... I am currently being referred on average a case a week, the true scale of the problem is vast and victims of trafficking are being prosecuted daily throughout the UK..

Many of my clients who have been prosecuted go missing within a week of being released from custody, from their foster placements and local authority care. There are issues with safeguarding, protection plans and lack of training and awareness surrounding human trafficking and the complexities of debt bondage...

Solicitor²⁴

Recommendation 7 – Respond to the particular needs of looked after children and young people in minority groups

- 7.1 Data about looked after children's involvement in the criminal justice system should be regularly published and clearly disaggregated on the basis of ethnicity, faith, gender and disability and, where applicable, the type of custodial establishment in which children are held.
- 7.2 We welcome David Lammy MP's independent review of the treatment of, and outcomes for black, Asian and minority ethnic people in the criminal justice system, commissioned by the Prime Minister and due to report in Spring 2017.²⁵ With assistance from the Department for Education, the Welsh Government and the Youth Justice Board for England and Wales, the Lammy review should:
- (a) Specifically consider the experience of looked after children and young people who are black or from other minority ethnic backgrounds in the criminal justice system, including why they are over-represented in custody compared to other looked after children; and
 - (b) Analyse the available data, disaggregated by ethnicity and region, and make recommendations as to gaps that need to be filled in order to identify unequal outcomes and their underlying reasons, to achieve equal treatment for all children and young people, and to measure progress.
- 7.3 In establishing and monitoring locally agreed outcomes to protect children and young people in care from criminalisation (see recommendation 1), lead local authority members

for children's and social services, corporate parenting boards and Chief Constables should include a specific focus on:

- (a) Meeting the needs of children and young people in care who are black or from another minority ethnic group
- (b) Meeting any faith-related needs of children and young people in care
- (c) Ensuring that the treatment of children and young people in care is gender-sensitive.²⁶ This must include, at a minimum, ensuring that girls have access to support and supervision by female officers and staff
- (d) Meeting any additional needs of children and young people in care due to developmental disabilities and disorders, learning disabilities, learning difficulties and speech, language and communication needs. This should include training to ensure that frontline staff and police officers in all agencies are able to identify and respond to any possible needs, ensuring prompt and appropriate information sharing about known needs and ensuring children and young people have access to support and any specialist services required to support their social development, education and emotional wellbeing and protect them from criminalisation
- (e) Meeting the needs of looked after children who are subject to immigration control. This should include, at a minimum:
 - (i) Ensuring that the mental health needs of unaccompanied asylum seeking children are met as a priority, recognising the circumstances of their coming to the United Kingdom
 - (ii) Supporting foreign national children in care to resolve any outstanding matters concerning their immigration status
 - (iii) Ensuring that young people with experience of care who are subject to deportation proceedings due to criminality are legally represented in those proceedings and that full information is provided to the tribunal to ensure that the circumstances of their coming to the UK and their experiences in the care system are taken into account
- (f) Meeting the needs of looked after children who are potential victims of trafficking. This should include ensuring that they are identified as victims at the earliest possible stage and protected in line with legislation and policy. This must ensure at a minimum that:
 - (i) The police:
 - (a) Cover trafficking in the custody record/booking in process
 - (b) Cover trafficking in crime reports
 - (c) Share information with other forces to avoid new prosecutions of children who are trafficked again

- ii) Children’s social care and social services, youth justice services, the police, Crown Prosecution Service, lawyers, magistrates, judges and staff in the secure estate receive training on how to identify potential child victims of trafficking and how to safeguard those children
- iii) The Home Office, Ministry of Justice and Youth Justice Board for England and Wales work together to produce guidance on how to identify victims of trafficking and how to safeguard possible victims in the secure estate.

Outcome Five: Effective prevention, diversion and rehabilitation - close joint work is pivotal between children’s social care, youth justice services, child and adolescent mental health services, the police, the Crown Prosecution Service, the courts and the secure estate

From my experiences it felt that I was in care so it was expected I got into trouble with the police, as I was bad news. I felt that children in care were treated differently in the youth justice system to someone who may live at home with their parents.

Adult who grew up in care²⁷

Our Youth Panel took up this issue with the Crown Prosecution Service and the Local Authority, and we kept being given the reassurance that every case involving a looked-after child was reviewed according to a special protocol to weed out minor misdemeanours and only prosecute those cases which passed a ‘public interest’ test. And yet the young people continued to appear in court for throwing ice creams, kicking doors, squirting shower gel on carpets, using abusive language to staff.

Magistrate, recently retired²⁸

Close joint work between children’s social care and social services, youth offending services, the police and other criminal justice agencies must become standard practice across England and Wales in order to protect looked after children from criminalisation. This work should be aimed at ensuring carers are able to support children to behave in a socially acceptable way and to deal with challenging behaviour without involving the police; that looked after children are diverted from the criminal justice system wherever possible; and that, where this is not possible, looked after children are well supported and fairly treated throughout the criminal justice process and prevent reoffending. This has been done successfully in some areas through the use of restorative practice (please see page 28).

Recommendation 8 - Fair treatment and proper support for looked after children from criminal justice agencies

8.1 All criminal justice agencies (youth justice services, the police, the Crown Prosecution Service, the courts and secure establishments), working closely with children’s social care and social services, must ensure that they know when they are working with a child in care, understand their vulnerabilities and take a strategic and practical approach to ensuring that looked after children are fairly treated and well supported throughout the criminal justice process.

8.2 The police should not interview a child in custody, charge a child with an offence or administer an out of court disposal, without knowing whether that child is looked after and, where the child is looked after, without consulting their parent local authority. Where a looked after child is interviewed in custody, charged or receives an out of court disposal without these steps having been taken, the police should be required to explain the reasons to the court in any later proceedings.

8.3 The Crown Prosecution Service should review the operation of its guidance on the prosecution of looked after children in residential care in order to satisfy itself that both the letter and spirit of the guidance is being followed consistently and in all cases and, as part of this process, consider extending the guidance so that it covers all looked after children.

8.4 Where it appears that Crown Prosecution Service guidance for the treatment of looked after children has not been followed in bringing a prosecution, magistrates and judges should be able to stand a case down to allow the prosecution and defence to engage in a conference outside the courtroom, in an attempt to resolve the situation without resorting to formal court proceedings.

8.5 We take this opportunity to underline the basic principle that custody should only ever be used for children and young people where there is no alternative, whether or not they are looked after. Further:

(a) Where there is no alternative to custody, looked after children, like other children, should be placed in small, local units which are designed to promote their psychological and emotional wellbeing. We welcome the indication from Charlie Taylor that his review of youth justice, commissioned by the Secretary State for Justice, will include a fundamental rethink of children's custody, including the closure of young offender institutions and the establishment of small units with a strong focus on emotional wellbeing and education.

(b) Submissions to this review and research by HM Inspectorate of Prisons, Inquest and others demonstrates that looked after children can be particularly vulnerable while in custody and often have a particularly poor experience. A thoroughgoing review of custodial provision is required to ensure that the needs of looked after children are fully addressed within custody, including safeguarding, rehabilitation and planning for resettlement.

Recommendation 9 – Strengthen support from children's social care, social services and youth justice services for looked after children in the criminal justice system

Each concordat on protecting looked after children from criminalisation (see recommendation 1) should reinforce the responsibility of children's social care services to work closely with youth justice services in order to:

9.1 Support looked after children to be diverted from the criminal justice system and custody wherever possible, including:

(a) Ensuring the matter is dealt with without court proceedings unless there is no alternative

(b) Ensuring wherever possible that the child is eligible for bail and is able to comply with bail conditions

(c) Ensuring that where a child is convicted of an offence, the court is presented with robust community alternatives to custody, unless custody is the only possible outcome.

9.2 Ensure that where a child is remanded or sentenced to custody, the child is well supported during his or her time in custody and effective planning for the child's resettlement.

Outcome Six: Young people leaving care continue to benefit from good parenting and are protected from criminalisation

I feel like maybe if social services had not dumped me at the age of 16 and expect me to stand on my own two feet as a child, maybe I could of made different choices.

Young person responding to the review

.....It was less about 'me leaving care'....and more about 'care leaving me'

Young person cited in submission by Surrey County Council Youth Support Service and Surrey Police

Young people leaving care are too often expected to reach independence at a young age and with insufficient information and practical and emotional support, increasing their risk of criminalisation. Existing measures aimed at enabling children to stay in care until they are ready to become independent should be made available consistently across England and Wales, and support for those who are not engaged in education or training should be increased. Young people leaving care should receive clear information and adequate support (financial, practical, emotional) to enable them to thrive. We welcome the 'Staying Put' and 'When I am Ready' programmes which allows young people who are settled in foster care to stay with their foster carers up to the age of 21.

Recommendation 10 – Improve the rehabilitation of looked after children who have offended and support young people leaving care

- 10.1 Where any child is convicted of a minor offence, including a looked after child, consideration should be given to wiping the rehabilitation (or disclosure) period for that offence immediately. Where this is not possible, the rehabilitation period should be shortened and the offence should be expunged from the child's record at the age of 18.
- 10.2 Given the research evidence that leaving care early (at 16 or 17 years) is associated with poor outcomes, we recommend that the 'Staying Put' and 'When I am ready' arrangements currently provided to looked after children in foster care should be extended to looked after children leaving residential care and transitional accommodation placements.
- 10.3 We recommend that support for care leavers who are not in education or training should be extended from 21 to 25 years, matching the support received by care leavers in training or education.

Appendix One

Concordats on protecting looked after children from criminalisation: guiding principles

1. The cabinet sub-committee, and appropriate Welsh Government body should commission and disseminate a concordat on protecting looked after children from criminalisation to support local children's social care or social services and criminal justice agencies in protecting looked after children in England and Wales from unnecessary involvement in the criminal justice system. Each concordat will reinforce legislation and statutory guidance concerning children in care and care leavers.²⁹
2. Each concordat should be developed within one year. Within the same period, any corresponding amendments required to statutory guidance should be identified and put in place. There should be a further two year period for implementation followed by regular review.
3. Each concordat should set clear expectations for lead members, corporate parenting boards and chief constables to work together in partnership with other relevant agencies to establish common goals and implement joint working protocols to protect children in care against criminalisation. Relevant agencies include care providers, health commissioning bodies, health services, education services, the Crown Prosecution Service, courts and secure establishments. Joint working should include effective data sharing protocols and regular meeting forums.
4. Joint decision-making by local authorities and partner agencies should be facilitated through a decision making panel including senior-level representatives from the local authority, police, health and education services. This would be for all children but would be a good mechanism for ensuring that relevant factors for looked after children are properly considered.
5. Each concordat should recognise the important roles of early support for children and families at risk and good parenting by the state in protecting looked after children from criminalisation, and should set out the expectations on local authorities as described at recommendations 3 and 6.
6. Each concordat should be developed and implemented in consultation with children and young people with experience of care and the criminal justice system, parents and carers, local authority leaders and practitioners. Leaders of local government, children's social care and social services, National Police Chiefs' Council, police and crime commissioners, the Crown Prosecution Service, the Magistrates' Association and health commissioning bodies should be involved.
7. Each concordat should build upon the quality standards for residential children's care by encouraging the training of all carers, police and the wider children's social care and social services workforce 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, avoiding formal criminal justice processes wherever possible. This has been done successfully in some areas through the use of restorative practice (see page 28).

8. Each concordat should make clear that, in developing their joint working protocols to protect looked after children and young people from criminalisation, lead members, corporate parenting boards and chief constables should ensure that they address the particular needs of children and young people in care who are black or from other minority ethnic groups, and those of Muslim children and young people in care. This should include:
- (a) Ensuring that looked after children and young people who are black or from other minority ethnic backgrounds, and those of Muslim faith, are consulted at both an individual and collective level about their experiences in the care and criminal justice system and matters that affect them, and using this information to help ensure their needs are met and that they are fairly treated
 - (b) Conducting regular equality analyses about the numbers and proportions of children and young people in care who are black or from other minority ethnic groups, and those of Muslim faith, and who become involved with the criminal justice system and developing plans to address any disproportionality
 - (c) Ensuring that staff and police officers undergo continuing professional development to challenge negative stereotypes and ensure the fair treatment of looked after children and young people who are black or from other minority ethnic backgrounds, or of Muslim faith
 - (d) Ensuring that looked after children and young people who are black or from other minority ethnic groups, or of Muslim faith, who are at risk of criminalisation can access support and advice from peer mentors and positive role models from their own communities.
9. These joint working protocols should also be aimed at ensuring through consultation with children and young people, regular equality analyses, continuing professional development and the use of peer mentors, that the protection of children and young people in care from criminalisation is gender-sensitive; in particular, that girls in care are protected from child sexual exploitation and that negative stereotypes about girls subject to child sexual exploitation are challenged.
10. These joint working protocols should also be aimed at ensuring through consultation with children and young people, regular equality analyses and continuing professional development, that the protection of children and young people in care from criminalisation takes full account of children and young people's disabilities and speech, language and communication needs. This will require:
- (a) Awareness raising and training amongst all professionals who come into contact with looked after children and young people who are at risk of criminalisation, including carers, social workers, teachers and health professionals, as well as the police, Crown Prosecution Service, lawyers, judges and magistrates and secure establishments
 - (b) Such training to be aimed at ensuring professionals are able to identify possible underlying developmental disabilities and disorders, learning disabilities and learning difficulties, and speech, language and communication needs, and ensuring that they know how to engage effectively with children and young people displaying signs of underlying conditions or additional needs
 - (c) More effective communication between children's social care, health, education and criminal justice agencies to ensure that information is passed on about children's known conditions and needs and that this information is taken into account in the treatment of children and young people and decisions that affect them
 - (d) Improved access to specialist services and support where it is needed.

Appendix Two

Review members

Chair

The Rt. Hon. the Lord Laming CBE DL

Review members (in alphabetical order)

Caroline Adams – Staff Officer for National Children & Young Persons Portfolio - National Police Chiefs Council representing Olivia Pinkney QPM, Chief Constable of Hampshire

John Bache – Deputy Chairman – Magistrates Association

Sally Bartolo – Peer Outreach Team Manager – Education and Youth Team – Greater London Authority

Tim Bateman - Principal Policy Advisor (Youth Justice), Children’s Commissioner for England

Ben Byrne – Association of Youth Offending Team Managers (England)

Stuart Carlton – Board Member – Association of Directors of Children’s Services

Teresa Clarke – Governor – HM Young Offender Institution, Swinfen Hall and NOMS Care Leavers’ Champion

Jeremy Crook – Director – Black Training and Enterprise Group

Darren Coyne – Project Manager – Care Leavers’ Association

Natasha Finlayson – Chief Executive – Who Cares? Trust

Shauneen Lambe – Executive Director – Just for Kids Law

Lord McNally – Chair – Youth Justice Board for England and Wales

Mary O’Grady – Chair – YOT Managers Cymru

Elizabeth Rantzen – Trustee – Prison Reform Trust

Nigel Richardson - Director of Children’s Services -Leeds City Council

Councillor David Simmonds – Chair of Local Government Association’s Children and Young Persons’ Board

Enver Solomon – Director of Evidence and Impact – National Children’s Bureau

Dr Jo Staines – Director BSc Childhood Studies Programme – Hadley Centre for Adoption and Foster Care Studies, Bristol University

Chris Stanley – Trustee – Michael Sieff Foundation

Professor Mike Stein – Research Professor - Social Policy Research Unit, University of York

Baroness Lola Young – Crossbench Peer - House of Lords

In addition, eight young people aged 14 to 23 years, with experience of care and the criminal justice system, were full members of the review panel.

Prison Reform Trust staff and pro bono assistance

John Drew CBE (Secretary to the care review)

Justin Elder (Executive assistant)

Juliet Lyon CBE (Director)

Katy Swaine Williams (Care review co-ordinator)

Dr Pamela Storey (Pro bono researcher) (formerly of Thomas Coram Research Unit, Institute of Education, University of London)

Grace Wyld (Volunteer)

About the review

The extraordinary response to this review demonstrates the strength of feeling amongst young people, parents and professionals alike, that we can and must do better in helping children in care to stay out of trouble. We join them in calling for the protection of children in care from criminalisation to be given high priority at national level and by all relevant local agencies. The evidence shows that strong leadership leads to clear results.

Terms of reference

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 in England and Wales, 'Keeping children in care out of trouble'. The review was launched in June 2015 with this central question:

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 authorities³⁰, yet a third of boys and 61% of girls in custody are, or have been, in care³¹ - 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.³²

It was agreed that the review would:

- a) bring together a group of young people who are, or have recently been, in care to consult them about the review and, throughout its course, to ensure that the review benefits from their insight and knowledge;
- b) seek evidence from children and young people, family members and carers, and relevant professional bodies;
- c) produce an accurate count of the number of children in custody in England and Wales who are, or have been, in care;
- d) summarise the research published, and currently being undertaken, in this area;
- e) capture international evidence of good practice;
- f) identify current best practice in England and Wales to inform the review;
- g) make recommendations for national government, including its Inspectorates, to consider;
- h) make recommendations for local authority lead members for children's and social services, directors of children's and social services and other relevant agencies to consider; and
- i) publish and disseminate findings and recommendations and work to ensure they are implemented.

Lord Laming invited a broad range of senior practitioners and experts in children's social care and youth justice to join the review panel (see page 23). The review panel members have drawn on their considerable experience and knowledge to advise the review. A children and young people's consultation group was also established whose eight members aged 14 to 23 years, all with experience of care and the criminal justice system, were also review panel members.

Work from June 2015 to April 2016

The review was launched with a call for evidence on 23 June 2015. The launch received widespread media coverage, including 500 individual broadcast stories and 50 offers of help and commitments to provide evidence on the first day alone. Over 220 written submissions have since been received from a wide range of agencies and individuals with personal or professional experience of care and the criminal justice system.

The review panel includes 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. The panel held regular meetings between June 2015 and April 2016 to hear oral evidence and advise on findings and recommendations. The young review panel members were included in these meetings and also held their own additional working sessions.

Review panel members heard oral evidence at further meetings and during visits to agencies and establishments, at national conferences and in regional forums of practitioners and policy makers. A number of requests were received from individuals to meet the review panel to talk about their personal experiences of care and the criminal justice system. These requests were met where possible. We also held three focus groups with young people in custody and in the community.

In August 2015, Lord Laming wrote to the chief executives of all local authorities in England and Wales to find out the numbers and proportions of looked after children who had offended or were in custody, regardless of how long they had been in care (in other words, not limited to those in care for at least 12 months). Over 90 local authorities (60% of the total) provided the data requested and this has been analysed alongside data from other available sources.

Review panel member Dr Jo Staines of the Hadley Centre for Adoption and Foster Care Studies, School for Policy Studies, University of Bristol was commissioned to produce an independent literature review to accompany this review's findings, with generous support from the Hadley Trust.

Findings and recommendations

We have taken as our starting point the evidence received from all these sources, with a particular emphasis on what we have been told by children and young people in care and those who have recently left care. The result is neither a piece of academic research nor a policy document. Rather, the full review report (of which this is a summary) is a distillation of the views and experiences of over 260 people with past or present experience of growing up in care or working with children and young people in care and in the criminal justice system, and other experts and organisations working in relevant fields. Where permission is available, the review's written submissions will be made available on the Prison Reform Trust website as an additional resource. Dr Jo Staines' independent literature review, 'Risk, adverse influence and criminalisation: Understanding the over-representation of looked after children in the youth justice system' offers a further resource for academics and practitioners.

Key facts

Looked after children - characteristics and outcomes

There were 75,155 looked after children on 31 March 2015 in England and Wales.³³

The majority of looked after children – 61% in both England and Wales - are looked after by the state due to abuse or neglect. Only a very small fraction of children become looked after for socially unacceptable behaviour, 2% in England and 4% in Wales. This category could include offending.

Three-quarters of looked after children in England and Wales are in foster care. Children and young people living in children's homes (not including secure), residential care homes and hostels constitute 11% of the total in England.

Of all children in care in England on 31 March 2015, 67% (46,690) had one placement during the year, 23% had two placements and 10% had three or more placements. Figures for Wales show slightly greater stability, with 71% (3,960) children having one placement during the year, 20% having two placements and 9% having three or more placements.³⁴

In 2015, 14% of looked after children in England achieved five or more A*-C GCSEs or equivalent, including English and mathematics. This compares to 53% of children in the general population and 15% of children in need.³⁵

In 2015, 61% of looked after children in England had a special educational need, compared to 50% of children in need and 15% of all children.³⁶

37% of looked after children in England have emotional and behavioural health that is considered to be a cause for concern, and a further 13% are considered borderline.³⁷

Looked after children in the criminal justice system

94% of children in care in England do not get in trouble with the law. However children in care in England are six times more likely to be cautioned or convicted of an offence than other children.³⁸

The review's survey of local authorities found that children in care who come to police attention may have a higher risk of being convicted as opposed to being cautioned compared to other children.³⁹

There is no reliable data on the numbers of looked after children in custody. Based on data from a number of sources we estimate that approximately 400 looked after children are in custody at any one time, of whom about 100 will be being held on remand; this is slightly less than half the current total number of children in custody.⁴⁰

Looked after children in custody show greater levels of mental health need (as a group) compared to other incarcerated children, receive less emotional and practical support and have worse outcomes in areas such as responding to behaviour incentive schemes and resettlement planning.⁴¹

In the most recent survey by the Prisons Inspectorate, children in secure training centres who said they were or had been in local authority care were:⁴²

- Less likely than their peers to say that they had visits from family, carers or friends at least once a week (34% compared with 61%)
- Less likely than their peers to say that they knew where they would be living when they left the centre (52% compared with 89%)
- More likely than their peers to say that they had been physically restrained during their time at the STC (45% compared with 29%)
- More likely than their peers to say that they had felt threatened or intimidated by other children while at the centre (25% compared with 10%).

Boys in young offender institutions who said that they were, or had been, in local authority care:⁴³

- Were twice as likely to consider themselves to have a disability (26% compared with 13%)
- Were significantly more likely to have been placed on a minor report (59% compared with 40%), been adjudicated against (74% compared with 61%) and been physically restrained (48% compared with 36%)
- Reported higher rates of emotional or mental health problems (37% compared with 16%)
- Were more likely to say they felt unsafe at the time of the inspection (17% compared with 11%) and that they had experienced victimisation by a member of staff (29% compared with 22%)
- Were significantly less likely to have had one or more visits per week from family and friends (23% compared with 43%).

Based on unpublished data made available to the review by the Youth Justice Board for England and Wales, 44% of looked after children in custody are from an ethnic minority background, which is more than one and a half times the proportions in the general population and the looked after population.

Cost of care placements

In 2012-13, authorities spent £1.5 billion on fostering services and £1 billion on residential care.⁴⁴

The average annual spend on a foster placement for a child is £29,000-33,000; for a residential placement it is £131,000-135,000.⁴⁵

£142.4 million was spent on secure accommodation for children in 2013-14.⁴⁶ This compares to £224 million in 2012-13.⁴⁷ The average cost per annum of secure accommodation by placement type 2013-14 breaks down as follows: secure training centre, £187,000; secure children's home, £209,000 and under-18 young offender institution, £60,000.⁴⁸

Good practice examples

Surrey County Council and Surrey Police have reduced the numbers of looked after children in the criminal justice system year on year since 2011 through close, joint strategic working. Their work is based on a multi-agency strategy to reduce offending by looked after children, supported by an inter-agency protocol, a steering group and regular forums for practitioners, as well as an extensive, multi-agency training and development programme on restorative practice, including training for foster carers. They also cite ‘transformation’ of Surrey youth justice, in particular through the introduction of the Youth Restorative Intervention (YRI)⁴⁹ and joint decision-making by the youth support service and police. An independent evaluation found that £3.41 has been saved for every £1 invested in the YRI and concluded that:

*the YRI reduced the unnecessary criminalisation of young people, reduced reoffending, provided better interventions for victims, improved victim satisfaction and reduced costs to the youth justice system.*⁵⁰

Leeds City Council is working towards a whole city restorative approach, incorporating not just children’s social work services but also wider children’s services, education settings and beyond as an integral part of the Leeds approach to better outcomes for children and families. Other areas of their work include partnership working with the Care Leavers’ Association on the Clear Approach programme, a focus on ‘Best Start’ and ‘Early Help’ and Family Group Conferencing and investment in reunification, including through the Multi-Systemic Therapy Family Integrated Transitions programme. In the year ending October 2015, Leeds saw a reduction in the percentage of children and young people known to the youth justice service who were looked after, from 13% to 10.5%. This represented a reduction in the percentage of looked after children in Leeds who were known to the youth justice service, from 7.6% to 5.4%.

Leicestershire City Council: In Leicestershire, following concern about the number of young people getting involved in the youth justice system, mainly for low level offences, a programme of restorative justice was introduced from 2007-2010 to establish a restorative approach across the children’s homes in the county, to enable the staff in the homes to manage low level behaviour without recourse to the police.⁵¹ An independent evaluation found that there was a substantial reduction in convictions and offences committed by children and young people both inside and outside homes.⁵² Ongoing work includes attempting to engage private children’s homes in this agenda.

Staffordshire Police: Close joint working by Staffordshire Police with local care homes has led to a reduction in missing episodes for looked after children in the area⁵³, a known contributing factor to criminalisation.⁵⁴ Key to this work has been the allocation of a named police officer to each residential home, and the expectation that they visit as part of their general duties, whether there is a specific problem or not.

Gwent: In Gwent a protocol has been agreed and implemented to reduce the prosecution of looked after children. The protocol is underpinned by training in the use of restorative

approaches where this is a safe and appropriate response to challenging behaviour by looked after children and young people. The aim of the protocol is to reduce the number of looked after children being arrested for minor offences that would not have come to police attention if the children had been living at home with their parents. The programme also offers training and support to foster carers and residential unit staff, and should also stabilise placements.⁵⁵

Norfolk: In Norfolk, the number of young people in care who became involved in the criminal justice system dropped by 52% two years after the implementation of county-wide restorative practice in children's homes. The scheme was introduced in 2009 and saw 100 staff trained in restorative practice. The number of young people in care who were charged with a criminal offence over the next two years fell from 7.2% in 2009 to 3.4% in 2011.⁵⁶

Hertfordshire: There was a 23% reduction in police call outs during the three years following the implementation of restorative practice in care homes by Hertfordshire County Council, compared to the previous three years.⁵⁷

Waltham Forest, London: A jointly funded Looked After Children/Youth Offending Service post in Waltham Forest ensures a clear joined up approach for looked after children known to the youth offending service. The postholder also reviews 'at risk' looked after children and works to reduce risk. This model was identified as an example of good practice in HM Inspectorate of Probation's Short Quality Screening Inspection 2015. In Waltham Forest, restorative justice training is completed with care home staff and foster carers who look after children in the care of the local authority, with the aim of reducing criminalisation. The Youth Offending Service and Children's Social Care team work together to deliver restorative justice with young people and care home staff to reduce placement breakdown. Restorative intervention officers have been introduced in schools to reduce criminalisation and absenteeism.

Endnotes

- 1 Oral evidence session, 25 June 2015
- 2 Prime Minister's party conference speech, October 2015: <http://press.conservatives.com/post/130746609060/prime-minister-conference-speech-2015>
- 3 Many of the review's findings and recommendations are reflected in the requirements of the UN Convention on the Rights of the Child and its protocols. Some are reflected in the findings of the 2014 Independent Inquiry into the Operation and Effectiveness of the Youth Court, chaired by Lord Carlile.
- 4 Mackie, A. et al. *Youth Restorative Evaluation Summary Report (2014)* GtD Social Impact Analytics
- 5 National Police Chiefs' Council (2015) *National Strategy for the Policing of Children and Young People*, London: NPCC
- 6 Submission 55
- 7 The cabinet sub-committee should have senior ministerial representation from all relevant government departments, including the Department for Education, Home Office, Ministry of Justice, Department of Health and Department for Communities and Local Government.
- 8 See Appendix One for further guidance on the proposed concordat on protecting looked after children from criminalisation.
- 9 The relevant inspectorates are Ofsted (in England) and the Care and Social Services Inspectorate Wales and Estyn (in Wales).
- 10 Department for Education (January 2016) *Children's social care reform: A vision for change*, London: DfE
- 11 http://www.ncb.org.uk/media/1237461/one_year_on_report_final_copy.pdf
- 12 Submission 96
- 13 Submission 10
- 14 Young women's focus group 7 March 2016
- 15 Submission 20
- 16 Department for Education (2015) *The Children Act 1989 guidance and regulations. Volume 2: care planning, placement and case review*, London: DfE
- 17 This is also reflected in the Care Leavers' Association's recommendations to government which identify the need for a 'cultural change in the understanding of, and responses to, looked after children and care leavers in the criminal justice system': www.careleavers.com
- 18 The Restorative Justice Council explains: "*In any setting involving children and young people, restorative approaches teach an understanding of others' feelings and the ability to connect and communicate successfully. They enable young people to think for themselves about how to respond to challenging situations, and to build trust and develop more mature responses to a difficult situation...*" (Submission 139)
- 19 Submission 208 - Black Training and Enterprise Group
- 20 Submission 223 - Imkaan
- 21 Young women's focus group, 7 March 2016
- 22 Submission 47
- 23 Submission 224 - Aylish Alexander Solicitors, concerning a young man from Congo who came to the UK as a young child, started offending while in care in England, and whom they are representing in an application to revoke an order for his deportation to Congo due to criminality. See the full review report for his story.
- 24 Submission 212 - Philippa Southwell, Birds solicitors
- 25 <https://www.gov.uk/government/news/review-of-racial-bias-and-bame-representation-in-criminal-justice-system-announced>
- 26 See the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.
- 27 Submission 76
- 28 Submission 51
- 29 Statutory guidance for local authorities in England on looked after children and youth justice recognises the increased likelihood of looked after children becoming criminalised. The guidance states that local authorities should to take a strategic approach to encouraging positive behaviour amongst looked after children who may be at risk of offending and to take measures to divert them from involvement with the criminal justice system. It recommends that children's homes should have protocols with local police forces to prevent children in their care from being 'needlessly criminalised'. (Department for Education (2014) *Looked after children and youth justice. Application of the Care Planning, Placement and Case Review (England) Regulations 2010 to looked after children in contact with youth justice services*, London: DfE) These principles are reflected in the Guide to the Children's Homes Regulations including the Quality Standards (Para 8.5, Department for Education (2015) *Guide to the Children's Homes Regulations including the Quality Standards*, London: DfE)
- 30 Department for Education (2013) *Children looked after in England year ending 31 March 2013*, London: DfE, StatsWales website, and Office for National Statistics (2013) *Population estimates total persons for England and Wales and regions Mid-1971 to Mid-2012*, London: ONS
- 31 Kennedy, E. (2013) *Children and Young People in Custody 2012-13: An analysis of 15-18-year-olds' perceptions of their*

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- experiences in young offender institutions*, London: HM Inspectorate of Prisons and Youth Justice Board.
- 32 These terms of reference were drawn from the statistics referred to above, which were the most recent available at the time of the review's launch. In its findings from 774 surveys completed by children at every secure training centre and young offender institution which were all inspected between 1 April 2014 and 31 March 2015, HM Inspectorate of Prisons has since reported that over half the children in STCs (52%) and almost two-fifths of boys in YOIs (38%) told the Inspectorate that they had been or were in local authority care. Redmond, A. (2015) *Children in Custody 2014-15: An analysis of 12-18-year-olds' perceptions of their experience in secure training centres and young offender institutions*, London: HMIP, YJB.
- 33 Statistics throughout this section, unless otherwise stated, are from the following sources. England: Department for Education (2015) *Statistical First Release SFR 34/2015*, London: DfE; Wales: Welsh Government (2015) *StatsWales, Children Looked After*, Cardiff: Welsh Government
- 34 England - Department for Education (2015) *Statistical First Release SFR 34/2015*, London: DfE. There has been a slight change in methodology this year, whereby a child going missing from his/her agreed placement is no longer counted as a separate placement in 2015. Whilst this means the figures for 2015 are not strictly comparable with earlier years, the percentages with 1, 2, 3 or more placements have changed relatively little compared with previous years, suggesting the impact of the methodology change is minimal. Wales - Welsh Government (2015) *StatsWales, Children Looked After*, Cardiff: Welsh Government
- 35 Department for Education (2016) *Statistical First Release 11/2016*. Changes to the way these figures are calculated means comparisons with earlier years are not possible.
- 36 Department for Education (2016) *Statistical First Release 11/2016*
- 37 Department for Education (2015) *Children looked after in England (including adoption and care leavers), year ending 31 March 2015: additional tables*, London: Department for Education. These figures are based on the Strengths and Difficulties Questionnaire. The SDQ should be completed for every child looked after for at least 12 months and aged 5 to 16 years-old as at the end of March. In 2015 there were 36,140 children in this cohort and 72% of these had an SDQ score returned.
- 38 Department for Education (2015) *Statistical First Release SFR 34/2015*, London: DfE
- 39 Review's survey of local authorities August 2015 to March 2016; *YJB Gateway to the Youth Justice System Chapter 1, Table 1.1 Flows through the youth justice system year ending March 2015*
- 40 See the full review report for commentary. See also Redmond, A. (2015)
- 41 Redmond, A. (2015) *Children in Custody 2014-15: An Analysis of 12-18 year olds' perceptions of their experience in secure training centres and young offender institutions*, London: HM Inspectorate of Prisons Ibid
- 42 Ibid
- 43 Ibid
- 44 Comptroller and Auditor General's Report, *Children in Care*, HC 787, Session 2014-15, 27 November 2014
- 45 Ibid
- 46 Youth Justice Board (2015) *Annual Report and Accounts 2014/15*, London: Youth Justice Board
- 47 Youth Justice Board (2013) *Annual Report and Accounts 2012/13*, London: Youth Justice Board
- 48 Hansard HC, 27 June 2013, c368W
- 49 The Youth Restorative Intervention is a pre-court disposal which is an alternative to the youth caution, youth conditional caution and prosecution and is described in an individual story in the full report.
- 50 Mackie, A. et al. *Youth Restorative Evaluation Summary Report (2014)* GtD Social Impact Analytics
- 51 Submission 14 - Leicestershire County Council
- 52 Submission 14; Knight, V. et al (2011) *Evaluation of the Restorative Approaches Project in Children's Residential Homes across Leicestershire: Final Report 2011*, Leicester: De Montfort University
- 53 Oral evidence session, 10 September 2015
- 54 See also Department for Education (2014) *Statutory guidance on children who run away or go missing from home or care*, London: Department for Education
- 55 Submission 196 - Blaenau Gwent and Caerphilly youth offending service
- 56 Community Care – Restorative justice cuts criminalisation and police intervention among looked after children. Cited in Submission 139 – Restorative Justice Council
- 57 Littlechild, B. et al (2010) *The introduction of restorative justice approaches in young people's residential units: A critical evaluation*, London: University of Hertfordshire; cited in Submission 139 – Restorative Justice Council

Acknowledgments

This independent review would not have been possible without initial support from the J Paul Getty Junior Charitable Trust and generous support from the Olswang Foundation, J Leon Charitable Trust, Hadley Trust, Persula Foundation, Warburg Pincus, AB Charitable Trust and kind individual donors.

We would like to thank all those who took the time to provide written and oral evidence to the review. We are particularly grateful to those who shared their personal experiences of care and the criminal justice system and those of close family members.

We are grateful to the review panel members for their knowledge and commitment. In particular we would like to thank the children and young people's consultation group who have made a profound contribution. For their assistance in supporting young people's involvement in the review, we thank Darren Coyne of the Care Leavers' Association, Emma Corbett of the Who Cares? Trust, Sally Bartolo and the Greater London Authority peer outreach team, Greg Nicholas of Cardiff Council, Liz Ibeziako, Barnardo's, the Big House Theatre Company, the Black Training and Enterprise Group and HMPYOI Feltham.

Further thanks are due to Grace Wyld and Pamela Storey for volunteering their time and expertise to assist with drafting this report, to Anne-Marie Day, and to all those who reviewed draft material. We are grateful to the Esmée Fairbairn Foundation, the Barrow Cadbury Trust, Google UK and the Welsh Government for hosting meetings.

We thank the Youth Justice Board for England and Wales, HM Inspectorate of Prisons and the Department for Education for assisting with the analysis of data on looked after children in the criminal justice system, and we also thank the Youth Justice Board for facilitating the review's evidence sessions at the 2015 Youth Justice Convention. Thanks go to the National Police Chiefs Council for helping us to gather evidence from police forces through written submissions and at their 2016 conference on the police response to children and young people. We thank Penny Hall, Huw Gwyn Jones and Sarah Cooper of the Welsh Government for their expertise and practical help.

Finally, we thank all those who hosted visits and held meetings with review panel members and supported the review in other ways, all of whom have helped to make this report a positive force for change.

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.

From 2007 to 2012 the Prison Reform Trust's Out of Trouble programme, generously supported by the Diana, Princess of Wales Memorial Fund, worked with some success to help reduce the numbers of children in custody in England and Wales. As part of that programme, the Prison Reform Trust commissioned research into the views of looked after children on the links between care, offending and custody. In 2015 the charity launched a major review chaired by Lord Laming to investigate the disproportionate numbers of children in care who were in custody and to make recommendations for reform.

The review's full report (of which this is a summary) has been prepared by Katy Swaine Williams, the review's co-ordinator, in consultation with John Drew who is secretary to the review. The report is accompanied by a literature review which is available from the Prison Reform Trust: 'Risk, adverse influence and criminalisation: Understanding the over representation of looked after children in the youth justice system' by Dr Jo Staines, Hadley Centre for Adoption and Foster Care Studies, School for Policy Studies, University of Bristol.