

Keeping children in care out of trouble: an independent review chaired by Lord Laming

Response by the Youth Justice Board for England and Wales to the call for views and evidence

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Introduction

The Youth Justice Board for England and Wales

Vision

Every child and young person lives a safe and crime-free life, and makes a positive contribution to society.

Strategic end benefits

- 1) To reduce the number of children and young people entering the youth justice system
- 2) To reduce reoffending from children and young people in the youth justice system
- 3) To improve the safety and wellbeing of children and young people in the youth justice system
- 4) To improve the positive outcomes of children and young people in the youth justice system

Mission statement

- Developing and championing a **child-centred and distinct youth justice system**, in which a designated youth justice service keeps children and young people safe and addresses the age-specific needs of the child, to the benefit of the community.
- Developing a '**centre of excellence approach**' in youth justice which will support innovation by using and interpreting available evidence to support the delivery of youth justice services in custody and the community. Also more effectively drawing on the contribution of academic institutions and other relevant bodies.
- **Driving continuous performance improvement in youth justice services** delivered in custody and the community through our robust monitoring system and by identifying and promoting best practice.

Our role

The role of the YJB is to oversee the youth justice system in England and Wales. The statutory responsibilities of the YJB include:

- Advising the Secretary of State on the operation of, and standards for, the youth justice system;
- Monitoring the performance of the youth justice system;
- Purchasing secure accommodation places for, and placing, children and young people remanded or sentenced by the courts to custody;
- Identifying and promoting effective practice;
- Commissioning research and publishing information

While the YJB is responsible for overseeing the performance of youth justice services including multi-agency youth offending teams (YOTs) and commissioning secure accommodation providers, the YJB does not directly deliver or manage any of these services.

We welcome the inquiry and the opportunity to submit written evidence and see this as an opportunity to make an important contribution to the reshaping of the way child care and youth justice services are delivered for looked-after children.

Response to review questions

1. How does the experience of being in care affect the likelihood of offending?

The quality of the data in relation to looked-after children and offending is not sufficient to extrapolate precisely why looked-after children are overrepresented in the youth justice system. However, past inquiries and research in this area suggests a small number of recurring themes that require more examination:

- The complex emotional needs of looked-after children
- Multiple placement breakdown for teenagers leading to greater instability
- Young people placed in high crime and high deprivation areas

The complex emotional needs of looked after children

Children's early life experiences have a significant impact on their development and future life chances. As a result of their experiences before entering care, and during care, children in care are at greater risk of entering the youth justice system than their peers¹. Looked-after children are more likely to be exposed to the risk factors established in research as associated with the onset of youth offending than the general population of children².

Risk factors for youth crime, and the factors leading to reception into care are similar. Risk (and protective) factors for young people who offend are categorised across four domains: the family; school; community; and those which are individual, personal and related to peer group experiences³. The majority of children in care are from backgrounds of deprivation, poor parenting, abuse and neglect – factors that together create risk for a range of emotional, social and behavioural difficulties, including anti-social and offending behaviour⁴. Furthermore, certain childhood experiences, such as abuse by adults or time spent in public care, have been shown to be correlated with school exclusions and youth crime⁵.

Based on the above, it may therefore not be the fact of being in care in itself that increases the risk of being drawn into the youth justice system, but rather the type of childhood experiences. Furthermore, considering the complex needs identified with looked-after children, a degree of overrepresentation could be expected.

However, it is important to note that the vast majority of young people in the care system do not enter the youth justice system. Department for Education (DfE) figures suggest that there are currently about 70,000 children in care, with 29,840 children aged between 10 and 17 (age of criminal responsibility). Of these,

¹ NSPCC website <http://www.nspcc.org.uk/preventing-abuse/child-protection-system/children-in-care/>

² Care Matters – Transforming the lives of children and young people 2006
<https://www.education.gov.uk/consultations/downloadableDocs/6731-DfES-Care%20Matters.pdf>

³ YJB risk and protective factors
<http://yjbpublications.justice.gov.uk/engb/Resources/Downloads/Risk%20Factors%20Summary%20fv.pdf>

⁴ University of East Anglia, looked-after children and offending – reducing risk and promoting resilience, 2011 p.1
http://tactcare.org.uk/data/files/resources/lac_and_offending_reducing_risk_promoting_resilience_execsummary_080112.pdf

⁵ Inclusion through exclusion Gillies and Robinson 2012
https://www.academia.edu/2220174/Inclusion_through_exclusion_a_critical_account_of_new_behaviour_management_practices_in_schools

between 6% and 8% (1800 – 2400 children) enter the youth justice system⁶.

While this figure suggests that most children in care will not enter the youth justice system, it is nevertheless more than double the 3% of children from the general population, who offend.

Multiple placement breakdown

Multiple placement moves are often cited⁷ as a reason for instability which is linked to an increased likelihood of offending. However, it is not fully understood whether placement moves themselves produce poor outcomes for children, or rather the unplanned nature of the moves⁸.

The recent State of the Nation report published by the Office of the Children's Commissioner for England suggests that nearly 50% of looked-after children had between 1 and 4 placement moves within the last year, and that teenagers were more likely to experience multiple placement breakdown.

Research shows that the absence of stability can undermine a child's wellbeing and feelings of self-worth⁹. Young people who experience multiple placement breakdown often do not invest in meaningful relationships, as these relationships are often disrupted through unplanned emergency moves. Furthermore, children with multiple placement breakdown have often entered the care system later in life, and may have had an unmet need for some time. Appropriate long-term placements for those children and young people with higher, more complex needs are more difficult to find and resource.

Children with multiple placement breakdown are therefore more likely to be placed in residential care where stability and long-term care is more difficult to establish and provide. This, in turn, reinforces the likelihood of entering the youth justice system¹⁰.

Young people placed in high crime and high deprivation areas

The State of the Nation report also suggests that the importance of feeling safe was key to building resilience in young people who were in the care system. Ofsted statistics show that just over one in four (18,128) looked-after children were placed in areas of the country with the highest crime levels. Half of children and young people living in independent accommodation and residential homes were living in areas with the highest crime levels (1,630). Furthermore the data shows that black and minority ethnic (BME) young people are more likely to be placed in areas of high deprivation and high crime rates than their white counterparts¹¹.

The impact of living in high crime areas can be significant for young people and is linked to increased risks of offending. The Dying to Belong report¹² suggests gangs are more likely to flourish where there are high levels of crime and deprivation, and where gangs exist the impact on young people is significant, and

⁶ University of East Anglia, looked after children and offending – reducing risk and promoting resilience, 2011 p.1

http://tacicare.org.uk/data/files/resources/lac_and_offending_reducing_risk_promoting_resilience_execsummary_080112.pdf

⁷ Social care institute for excellence website <http://www.scie.org.uk/publications/guides/guide07/placement/placement/index.asp>

⁸ Social care institute for excellence website <http://www.scie.org.uk/publications/guides/guide07/placement/placement/index.asp>

⁹ Social care institute for excellence website <http://www.scie.org.uk/publications/guides/guide07/placement/placement/index.asp>

¹⁰ Social Services improvement agency 2007

http://ipc.brookes.ac.uk/publications/pdf/What_works_in_promoting_good_outcomes_for_LAC.pdf

¹¹ Ofsted official statistics, children looked-after by local authorities, 2014 <https://www.gov.uk/government/statistics/children-looked-after-placements-as-at-31-march-2014>

¹² Centre for Social Justice, Dying to Belong, 2009

<http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/DyingtoBelongFullReport.pdf>

involvement is often forced and coerced through fear of victimisation¹³.

We should also take into consideration that this group of children are already subject to greater scrutiny and interventions by state institutions. Paradoxically, this itself makes children in the care system more likely to come to the attention of criminal justice agencies – especially where certain behaviours are ‘criminalised’ (in children’s homes and elsewhere) which for non-looked after children would not come to the attention of the authorities. The exposure to intervention and contact with statutory agencies, including the police, is amplified in areas of high crime and deprivation¹⁴.

2. (a) Which features of the care system increase or reduce the chances that a child or young person will offend?

The care system meets the needs of the majority of children and young people it looks after. The recent State of the Nation report about their experiences suggested that most children were happy with their care¹⁵. They said that forming positive relationships was an important factor in having a positive in-care experience.

It is furthermore difficult to know which factors contribute to offending, considering the complex relationship between user needs, service design and resource. However, there are some key areas that YJB stakeholders repeatedly reference, a small number of key elements of the care system which are particularly associated with a child’s likelihood of entering the youth justice system. These include placement type and placement stability.

Placement type

The likelihood of entering the youth justice system seems to be linked to the type of care placement. Young people placed in residential care settings are more likely to enter the youth justice system compared to their peers placed in foster care or adoption, by virtue of their more complex needs and historic instability.

It is therefore worth considering the residential care sector in more detail to understand the underlying causes for the overrepresentation. We would argue there are probably two main reasons for the higher likelihood of entering the justice system.

Firstly, the management of behaviour in residential homes varies and results in inconsistent outcomes. The absence of agreed thresholds for engaging the police in particular increases the risk of being drawn into the criminal justice system. Consequently, relatively minor poor behaviour in residential homes can result in referral to the police and other formal proceedings. This can increase the likelihood of children in residential care entering the justice system as a result of behaviours that would not attract a formal response had they occurred outside the care system.

We would also like to raise children’s home responses to children missing from care in this context. The recent focus on child sexual exploitation has not only heightened concerns about the absence of effective safeguarding processes to protect this particular cohort, but is increasingly showing the associated risks to entering the youth justice system. This was highlighted by recent research

¹³ Professor John Pitts, reluctant gangsters, 2008 <http://www.walthamforest.gov.uk/documents/reluctant-gangsters.pdf>

¹⁴ Howard League for Penal Reform https://d19vlp04aovc7m.cloudfront.net/fileadmin/howard_league/user/online_publications/Justice_for_young_people_web.pdf

¹⁵ OCC State of the Nation report, Children in care and care leavers survey, 2015

<https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Care%20monitor%20v12.pdf>

undertaken by the Office of the Children's Commissioner¹⁶, but also as part of emerging evidence into what is commonly known as 'county lines', where street gangs are targeting vulnerable young people, some of whom are in the care system, to go to other parts of the country to undertake drug dealing activity.

Secondly, the inconsistent regulatory framework of children's homes may also disproportionately draw children into the youth justice system – particularly for private and voluntary residential units. While those looking after children under the of 16 are required to register with Ofsted, there are many semi-independent units providing care for the vulnerable 16-18 age group, that do not. Most host local authorities have criteria that semi-independent providers must match, but how this is monitored is unclear¹⁷.

The variation in regulations and oversight can result in variations in the standards of care. The Department for Education found¹⁸ that homes with good quality, child-centred practice, a commitment to the parenting role, and a clear mission to provide the best outcomes for children, had better trained staff who knew how to identify both behaviours and appropriate referral pathways.

It would be helpful to better understand the existing evidence base about accommodation type and outcome.

Placement stability

Stable, long-term placements are known to build resilience in young people to achieve positive outcomes. Research suggests a number of factors which affect the stability and outcomes of placements. These include, the age at which children enter care, the history of abuse and neglect, the degree of emotional and behavioural difficulties, and the suitability of the placement to meet the needs of the child¹⁹.

A benefit of maintaining a long-term placement is the forming of secure attachments to carers. Attachment theory and its impact on childhood development is well-documented, and children who form secure attachments with a consistent care giver are seen as having a developmental advantage.

Conversely, the absence of stable, long-term placements which enable children to form healthy and trusting relationships with adults increases the risk of negative outcomes²⁰ – including entering the youth justice system. The ability to form stable relationships is further impacted upon in cases where a child is placed out-of-borough, often as an emergency response, or as a result of a previous placement breakdown.

Research²¹ shows that if a child's first placement breaks down they are likely to enter a cycle of breakdowns. The nature of emergency placements, compounded by lack of local choice and resource has led to the expansion of 'out-of-borough/county placement'.

Out-of-borough/county placements can provide particular challenges to both young people and the staff trying to support them. A large proportion of looked-after children were placed 'out-of-borough in 2013²², nearly 40% (24,000) were

¹⁶ OCC State of the Nation report, Children in care and care leavers survey 2015
<https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Care%20monitor%20v12.pdf>

¹⁷ Children homes regulations 2011 <http://www.legislation.gov.uk/uksi/2011/583/made>

¹⁸ Department for Education, Behaviour management and preventing offending by children placed in children's homes 2013

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262596/Mouchel_Report_summary_Executive_Summary_-_Final.pdf

¹⁹ Social care institute for excellence <http://www.scie.org.uk/publications/guides/guide07/placement/placement/index.asp>

²⁰ Social care institute for excellence <http://www.scie.org.uk/publications/guides/guide07/placement/placement/index.asp>

²¹ Social care institute for excellence <http://www.scie.org.uk/publications/guides/guide07/placement/placement/index.asp>

²² Ofsted official statistics, children looked-after by local authorities, 2014 <https://www.gov.uk/government/statistics/children-looked-after-placements-as-at-31-march-2014>

living outside their local authority boundary. Significantly, the ratio of children placed in children's homes (60%) living out of borough was higher, compared to those in foster care (30%).

Research undertaken by the University of Bedfordshire and Channon Consulting²³ suggests that apart from the more obvious disruption to a young person's life – including accessing health and educational services – these placements tend to be monitored less effectively. This, in turn, can impact on the amount of time social workers could commit to visiting young people in these placements.

The report also stated that children placed out-of-borough/county could be at greater risk of exploitation and gang affiliation. While youth offending teams (YOTs) have good data exchange mechanisms, there are issues about the adequacy of information flows between services and the level of shared understanding about continuing responsibilities of the placing authority if young people placed out-of-area go on to (re-)offend.

Placing young people out-of-borough/county could also have implications for their resettlement as some found they had to return to their home borough to access leaving care services. Difficulties can really arise when out-of-borough placements are poorly planned and monitored which can present safeguarding, public protection and resource challenges.

2. (b) What other factors (including pre-care and post-care experiences) influence the chances whether a child or young person with experience of care will offend?

The root causes for a child's complex needs can often be traced back to their childhood and pre-care experiences. Where YOTs are concerned, the arrangements for young people leaving care are often crucial in preventing a young person from offending or reoffending

Leaving care regulatory framework arrangements can be uncertain. The state of the Nation report²⁴ said that almost half (46%) of care leavers said they were either unsure about leaving care, or not ready at all. They expressed concern about their independence skills, where they were living, and access to support. Some cited that rules and policy prevented them from having the learning experiences that other children had to prepare them for independence. While there was pride in making progress towards independence, a value was also placed on having supportive adults around them.

Historically, children's services were reticent to accommodate young people over the age of 16 who were experiencing problems at home or who had suffered trauma, instead referring them to housing services who would in turn provide a number of temporary and unsafe placements while they awaited permanency. However according to DfE statistics²⁵ this trend has been reversed and there is a 20% increase in the accommodation of 16 year olds, which is a welcome recognition that this particular age group are not only having to deal with the complexity of issues in their lives, but also the concept of transition to adulthood.

²³ Out of borough placement for looked after children, a Research Study, 2014 www.londoncouncils.gov.uk/download/file/fid/4262

²⁴ OCC State of the Nation report, Children in care and care leavers survey, 2015
<https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Care%20monitor%20v12.pdf>

²⁵ DfE official statistics, 2014
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/359277/SFR36_2014_Text.pdf

2(c). When decisions are made regarding a child in need that prevent entry into the care system, such as placing a child in kinship care, what influence can that have on the chances of a child or young person offending?

We are not sure with any degree of certainty about the impact kinship care has on the likelihood of offending, but due to the similar risk factors and indicators we can hypothesise likely outcomes.

One possible implication of placing a young person into kinship care is that oversight is less stringent and professional input more sporadic than for children in formal care arrangements. This could lead to increased levels of need, as issues and problems are not identified or assessed in a timely manner. In addition, unsupported placements are more likely to break down, thrusting an already vulnerable young person into further instability. These conditions are likely to increase the chance of young people committing offences.

Unfortunately, current youth justice data is not available to make a distinction between those with statutory care status and those with voluntary status. Anecdotally, we are aware that those with voluntary status are more likely to lose their care status when they go to custody. This is usually based on local decision making.

3. Which features of the youth justice system* increase or reduce the chances that a child or young person with experience of care will get involved in the criminal justice system and/or reoffend?

** The term 'youth justice system' is intended to mean the law, policy and practice relating to the treatment of children and young people by the police, youth offending teams, courts, secure children's homes, secure training centres and young offender institutions.*

The multi-agency nature of YOTs has contributed to the successful reduction in the number of young people entering the youth justice system. Unfortunately, current data is unable to show whether these reductions have equally impacted on looked-after children.

From the outset it is worth stating that there is currently no centrally prescribed, bespoke approach to managing children who are looked after in the youth justice system. In many instances, YOTs have adopted local approaches to address the specific needs of this cohort.

In order to assess which features of the youth justice system increase or reduce the likelihood of a looked after person (re-)entering the youth justice system, it is worth looking at each element of the system.

Prevention – pre justice

There are a number of initiatives to reduce the amount of young people coming into the youth justice system unnecessarily. The Legal Aid, Sentencing and Punishment of Offenders Act (2012) further formalised and streamlined the existing out of courts disposal framework in order to ensure outcomes are both proportionate to the crime committed and effective in addressing the causes that may lead to further offending.

The use of these disposals has resulted in significant falls in first time entrants, and a key feature is statutory joint decision making between the YOT and the

police to ensure the interests of the young person and victim are considered²⁶.

Whilst the current framework does not explicitly stipulate whether the care status of a young person should be taken into account when making decisions, local decision making is informed by the wider needs of the child. We would expect this to include considering whether a child's care status has impacted on his/her offending behaviour.

According to DfE statistics, the vast number of young people who cease to be looked-after, do so because they have returned home, which places an additional emphasis on the supporting peripheral services to identify how they can work to ensure the young person remains at home, at school and in the community. Although much of the preventative work YOTs carried out, is done elsewhere, they take an interest and often engage at both a strategic and operational level.

The police, arrest and charge

There is insufficient evidence to fully understand whether police decision-making processes differ between children with care experience and those that do not. However, young people themselves have commented that their care status can act as a moderating influence on decision-making²⁷.

The flagging of looked-after status is not consistent across all police forces, therefore identifying looked-after children, at the time of contact with the police, will be inconsistent. Following an arrest of a looked-after child the appropriate adult role is often undertaken by the care worker from the children's home, bypassing the trained service. While some care workers are trained to undertake appropriate adult duties, many may not be. Skilled facilitation at the police station is helpful in assisting young people to navigate difficult processes such as recorded interviews and fingerprinting.

The National Police Chiefs Council have recently published (April 2015), the "*National Strategy for the Policing of Children & Young People*". The key principles set out within this document align to the four priority areas within the All Party Parliamentary Group Report, "*It's all about trust; building good relationships between the police and children*". This police strategy contains some guidance in an attempt to avoid the unnecessary criminalisation of looked-after children. It goes on to highlight the need to ensure the criminal justice system is not used to resolve issues that would ordinarily fall to basic parenting. In some areas (initiated in the South East), this is being supported by the adoption of a multi-agency protocol, and there is currently a drive for national, but local, adoption.

The Crown Prosecution Service have developed guidance for prosecutors, with a dedicated section relating to children's homes. The guidance recognises that looked-after children have particular needs which may mean there is a greater likelihood of offending and police involvement when they are in residential care. Whilst the existence of this guidance could act as a moderating influence when decisions about prosecutions are made, there is evidence to suggest that it is not always enforced²⁸.

Reflecting concerns about the inconsistent approach to behaviour management, it is worth stating that police responses to children's homes are also inconsistent. This aggravates the risk that children in residential children's homes are drawn into the criminal justice system for relatively minor offences.

²⁶ Youth justice annual statistics 2013/14 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf

²⁷ Ofsted, care and prejudice http://dera.ioe.ac.uk/179/7/Care%20and%20prejudice_Redacted.pdf

²⁸ Crown Prosecution Service guidance looked-after children https://www.cps.gov.uk/legal/v_to_z/youth_offenders/#a21

At court

At court, magistrates are already required to consider a young person's care status and their life circumstances and experiences. Professionals from both the YOT and the legal profession are at court to facilitate this. Current sentencing guidelines require magistrates to consider the age and maturity, family circumstances, the seriousness of offence and previous offending history of a young person, and furthermore explicitly state that care experiences should be considered as mitigation during sentencing. Although the YOT worker at court can represent the interests of the looked-after child, the absence of the looked-after child's social worker at court proceedings is notable. Their attendance would be helpful to the court when deciding a range of issues about the child, particularly for offences that occur within the children's home.

Looked-after children may be at greater risk of remand to custody, particularly where home accommodation and family relationships are unsuitable and may have contributed to the offending. If a looked-after child is at risk of remand to custody, the YOT workers liaise closely with children's services to identify appropriate placements as an alternative to custody. Similarly when the court considers applications for bail, when the certainty of family support and accommodation may not be so easily accessible, the courts are often proactive in seeking children's services support to avoid remands to custody.

Bail and remand

Welcome changes in remand arrangements for 16 and 17 year olds now require that any young person of that age who is remanded to custody, as well as to the local authority, will become a 'looked-after' child for the duration of the remand period. These changes were introduced to facilitate effective resettlement planning.

During the consultation phase, stakeholders raised concerns that the introduction of automatic looked-after status without reference to a child's need may create a two-tiered system.

Assessment and interventions

Current youth justice assessment systems require workers to consider looked-after status in their planning, but not in relation to whether that status was a contributory factor to their offending. The YJB is introducing a new assessment and planning interventions framework ([AssetPlus](#)) to replace Asset and its associated tools. AssetPlus focuses on professional judgement of practitioners and encourages the assessor to build on identified strengths and will enable better-focused intervention plans to improve outcomes for children and young people.

The introduction of AssetPlus will require youth justice practitioners to consider the relationship between looked-after status and the individual's offending, which should result in more appropriately tailored interventions.

Moreover, youth justice practitioners are encouraged to work with children's services and other partners during the assessment process. Interrogating the children's services database is key to understanding whether a young person has a registered care status.

Most YOT interventions are based on cognitive behavioural approaches to address the offending behaviour of young people. This approach is seen to be valuable in building resilience, and changing emerging or entrenched behavioural

patterns.

While the YJB has not developed specific interventions for looked-after children, YOTs have begun to partner with organisations that deliver more therapeutic approaches in response to the changing needs of the youth justice cohort. These approaches are better suited to address some of the underlying reasons for the offending behaviour – including trauma, attachment issues and abuse.

Similar developments have taken place in relation to services delivered to looked-after children. The State of the Nation report²⁹ states that young people want services to pay more attention to their physical and emotional needs. As YOTs become more skilled in their therapeutic approaches the benefits to looked-after children in the youth justice system may increase.

Looked-after children in custody

Although the number of looked-after children that go to custody is relatively small, we know that they are significantly overrepresented. A recent survey of young people in custody³⁰, suggested that as much as one third of boys and nearly two thirds of girls have been in the care system at some point in their lives.

We also know that children with care experience entering custody have particular needs. A thematic inspection³¹ undertaken by HM Inspectorate of Prisons (HMIP) identified that young people with care experience were more likely to report problems on arrival in custody, have substance misuse problems, and emotional and mental health problems. It is therefore important to consider whether current custodial services are responsive to the particular needs of this cohort and that they continue to receive support from their corporate parent.

Despite the additional needs of this cohort, HMIP report that half of those interviewed said they had not been visited by their social worker in custody or received financial support from their local authority. For these children it is particularly important that the local authority children's services fit seamlessly with the way the youth justice system operates.

The local authority retains corporate parental responsibilities for most looked-after children who are in custody, primarily those with full care status (s.31) and those meeting leaving care criteria (s.24). Some local authorities also retain corporate parenting responsibilities to those looked after on a voluntary status (s.20).³²

However, a period in custody can mean that existing relationships with case managing social workers are disrupted. We are aware that in some cases, the YOT case worker takes on the additional corporate parenting responsibilities. Whilst this approach may drive efficiencies, this inevitably has an impact on the stability of a young person's relationships with significant adults. On a wider note, it highlights the need for care planning and sentence planning processes to be closely aligned and complementary.

²⁹ OCC State of the Nation report, Children in care and care leavers survey, 2015

<https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Care%20monitor%20v12.pdf>

³⁰ Care - a stepping stone to custody?, 2011, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/caresteppingstonetocustody.pdf>

³¹ HMIP thematic inspection – looked-after children in custody 2011 <http://dera.ioe.ac.uk/3657/2/looked-after-children-2011.pdf>

³² 1989 Children Act <http://www.legislation.gov.uk/ukpga/1989/41/contents>

Resettlement into the community

The absence of certainty around settled accommodation not only impacts on a young person's likelihood of reoffending, but also on early release decisions. HMIP reports that the absence of agreed accommodation arrangements is particularly acute for children who are looked-after.

In order to support 'host' local authorities to discharge existing safeguarding responsibilities for children in Young Offender Institutions (YOIs) effectively, the YJB has funded specific posts in each institution. All YOIs now have qualified social workers to contribute to the assessment of risk and vulnerability, and to bridge the gap between custody and community services.

An independent evaluation³³ of the social worker role commissioned by the YJB found that one of the most important roles was the setting-up of systems that enabled the identification and tracking of looked-after young people, and the subsequent accessing of services.

However, despite the additional support provided by social workers within YOIs, we know that resettlement outcomes for looked-after children are generally worse compared to their peers in the general population.

4. Are there parts of the youth justice system* that have an unfair impact on children and young people with experience of care?

* 'Youth justice system' is defined here as at question 3 above.

We have outlined the impact of youth justice system processes on children with care experience in the above section.

In summary, the key points where we believe young people may be unfairly treated in the youth justice system are:

Pre-court

Following an arrest of a looked-after child the appropriate adult role is often undertaken by the care worker from the children's home, by-passing the trained appropriate adult service. While some care workers are trained to undertake appropriate adult duties many may not be. Skilled facilitation at the police station is helpful in assisting young people to navigate difficult processes such as recorded interviews and fingerprinting.

Court and sentencing

With the expansion of civil powers to tackle a range of anti-social behaviour, looked-after children could find themselves in court to answer allegations from the local authority (their corporate parent). To further compound this, amendments to civil legal aid could mean they do not have access to legal representation.

Looked-after children are often prosecuted for offences they commit through their exploitation by adults. The introduction of the Modern Slavery Act 2015 could see an additional layer of protection for those who are vulnerable and manipulated or

³³ Youth Justice Board – Evaluation of social worker posts in YOIs 2008
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353955/yjb-evaluation-social-work-posts-YOIs.pdf

coerced into offending behaviour.

Ineffective management of behaviours in residential children's homes – coupled with inconsistent police responses – can result in children placed in these homes being drawn into the youth justice system inappropriately.

Custody

Children in the care system are more likely to experience disruption of existing relationships with their case-holding social worker than those who are not looked-after.

Resettlement

Securing stable accommodation on release from custody is crucial to the successful rehabilitation of young offenders. Historically, accommodation for 16 and 17 year olds has been insufficient in quantity, range and quality. Furthermore, support to young people leaving custody has been identified as needing improvement³⁴. On a related note, children without arrangements for accommodation may be disadvantaged when decisions about early release are made. It is possible that this would disproportionately impact on children with care experience.

5. Which features of other services, such as education, health and housing, increase or reduce the chances that a child or young person with experience of care will offend?

We know that children with care experience are at risk of disengaging from mainstream services. Disengagement with mainstream services, particularly education, correlates with entering the youth justice system.

Education

There is a strong relationship between engagement and achievement in education and protection against involvement in offending behaviour³⁵. We would particularly welcome better support in schools to help prevent exclusions of children in care given the links between absence and exclusion from school and offending. Better working relationships between schools and YOTs could help develop approaches to prevent new exclusions from school and ensure through information sharing that emerging problems are identified early.

On a related but separate point, the YJB would also welcome consideration being given to how approaches to improve educational outcomes for children in care could be applied to other groups, including children and young people who offend and have been disengaged from education.

Speech, language and communication needs (SLCN)

Young people with SLCN have difficulty communicating with others. This may be because they cannot say what they want to, have difficulty in understanding what is being said to them, or do not understand the social rules of communication.

³⁴ HMIP thematic inspection – looked-after children in custody, 2011 <http://dera.ioe.ac.uk/3657/2/looked-after-children-2011.pdf>

³⁵ The role of education in enhancing life chances and preventing offending, 2004 <http://dera.ioe.ac.uk/8465/1/dpr19.pdf>

By the time young people enter the youth justice system, many of those with SLCN will have developed coping strategies to mask the impact of the SLCN³⁶.

This might include:

- having a good level of surface conversation which they cannot maintain when conversations develop
- being very quiet and seemingly compliant
- using aggression to deflect hard conversations/to avoid having to admit that they don't understand
- being disruptive and having difficulty engaging
- indicating they understand, when they do not
- saying they understand when they do not.

It is important that those working with looked-after children in a care setting understand the signs, and are aware if a young person has previously been diagnosed with a SLCN.

Housing policy

The local authority has a duty to provide housing to young people leaving care which is not just sufficient, but meets the diverse needs of that young person. This responsibility is often not upheld, with young people receiving accommodation in areas that are high in crime and deprivation. The regular occurrence of placing over 16s in bed and breakfast accommodation is being reversed, but it has not yet been eradicated.

6. What can be done to help children with experience of care to avoid getting involved in the criminal justice system, and who should do it?

Below, we provide some concrete suggestions to mitigate against the risk of children with care experience being drawn into the youth justice system. We have provided suggestions that can be implemented within existing structures, but also some ideas which require a more fundamental system re-design and short-term investment. All our suggested actions have been made within the context of localised decision-making.

Suggested improvements to be made within existing structures:

- *General*
 - Seeking greater integration of Local Safeguarding Children's Board looked-after children and criminal justice subgroups (Youth Justice Board / Department for Education).
 - Review of Department for Education counting rules and data collection processes to ensure a more consistent national picture emerges with regards to the (criminogenic) needs of all children looked-after by local authorities.
- *Within the justice system*
 - Consider the development of a bespoke pathway for looked-after children in the youth justice system (Youth Justice Board / Home Office / Department for Education /Ministry of Justice)

³⁶ The Communication Trust doing justice to speech language and communication needs, 2014
https://www.thecommunicationtrust.org.uk/media/314657/doing_justice_to_speech_language_and_communication_needs_final_report.pdf

- The introduction of consistent police responses to children's homes (Youth Justice Board //Department for Education /Home Office/National Police Chiefs Council).
- Consistently high quality advocacy and appropriate adult services at the point of arrest to ensure that looked-after children get the same care and support as other children and can therefore make informed decisions about pleas and diversion work (Youth Justice Board/ National Appropriate Adults Networks/ Department for Education).
- *Within the care system*
 - Local authorities to undertake a case review for each looked-after children who enters custody to establish reasons and opportunities missed. Youth Justice Board and the Association of Directors of Children Services take on responsibilities to disseminate learning more broadly (Youth Justice Board/ Association of Directors of Children Services).
 - Ofsted inspection frameworks to include a specific focus on preventing the entry of children in the care system/children in need into the youth justice system (Youth Justice Board /Ofsted/ Association of Directors of Children Services).
 - Directors of Children's Services should sign-off any decision to place a child out-of-area and inform the Director of Children Services of the host area. For children in the youth justice system, this would include a requirement to involve the YOT in the decision-making process.
 - Introduce consistent regulation and monitoring of local authority and private children's homes, including small semi-independent units with less than 4 beds. This must include the duty to register with local authorities, and commit to engagement with existing structures. (Department for Education)
 - Introduce a training and qualification framework for care workers and kinship carers.

Suggested improvements for the longer-term

- *Commissioning of residential care*
 - Consideration of Department for Education leadership in commissioning and placing looked-after children to include:
 - a bespoke national placement service for all children entering residential care,
 - the development of national commissioning strategies for residential children's care.
- *System-wide reform*
 - The introduction of an agreed set of outcomes for children in care.
 - The introduction of an agency charged with overseeing the improvement of the care system in line with agreed outcomes.

7. What are the barriers to reform, and how might these be overcome in an environment of limited resources?

A small number of factors may impact on the ability to achieve sustainable and effective change. These include:

- **Fragmentation of the current system**
The care and youth justice systems are currently administered very separately. This may impact on the ability to align existing processes – for instance case review and sentence planning processes.

- **Current commissioning and placement processes**
An education select committee report in 2013 commented on the inherent challenges of current commissioning and placement processes for children in residential care. The localised nature of the care system makes system-wide reform more difficult to achieve.
- **Competing priorities locally**
The relatively small number (in absolute terms) of children with care experience in the youth justice system means that this is not seen as a priority by children's social care services. This is even more the case given the inherent pressures on the care system, and local priorities.

8(a) In relation to all your answers above, have you reflected the diverse needs and characteristics of children and young people of different genders and ethnic backgrounds? Please add any further comments here.

Most of the disadvantages identified for young people in care within this paper impact more acutely on young people in care from BME backgrounds. Whilst there is much research evidence documenting the marginalisation and social exclusion of care leavers, there has been a serious gap in our knowledge and understanding about the situation of BME young people. This in itself could demonstrate the system's lack of attention to this group of young people resulting in overall poorer outcomes.³⁷

8(b) Please describe any examples of best practice that you are aware of, where these are not covered above.

The YJB will be submitting practice examples separately.

³⁷ Ofsted official statistics, children looked-after by local authorities, 2014
<https://www.gov.uk/government/statistics/official-statistics-children-looked-after-placements-at-31-march-2013>