



changing lives
reducing crime

Reducing offending by looked after children



September 2012

Nacro, Park Place, 10-12 Lawn Lane, London SW8 1UD

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Contents

| | |
|---|-----------|
| Chapter 1 About the guide | 2 |
| Chapter 2 Background | 3 |
| Chapter 3 Laws, regulations and guidance | 5 |
| Chapter 4 Operational and strategic issues for YOTs and children's services | 13 |
| Chapter 5 Diverting looked after children from the youth justice system | 19 |
| Chapter 6 Key intervention points in the youth justice system | 24 |
| Chapter 7 Looked after children and custody | 29 |
| Chapter 8 Improving the quality of support to care leavers to prevent offending | 34 |
| Appendix 1 Changes to care status as a result of criminal justice decisions | 37 |
| Appendix 2 Current bail and remand options | 38 |
| Appendix 3 Children and young people entitled to leaving care services | 39 |
| Appendix 4 Strategic checklist for local authorities in relation to looked after children and offending | 40 |
| Appendix 5 Checklists for those working with looked after children in the community | 42 |
| Appendix 6 Checklists for those working with looked after children in custody | 45 |

Chapter 1

About the guide

In 2003 the Department of Health commissioned Nacro to undertake research to establish good practice on reducing offending by looked after children. This informed the first edition of this guidance, which was published on behalf of the Department for Education and Skills and the Youth Justice Board in 2005. This second edition, which has been produced as part of the Department for Education's support and improvement programme for children's homes, with contributions from the National Children's Bureau, offers good practice guidance to local authorities and their partner agencies to help them improve outcomes for looked after children and reduce the likelihood of them offending.

The main areas covered by this guide are as follows:

- An overview of the key issues in relation to looked after children and the prevention of offending.
- Information about the legal framework and the interface between the youth justice system and the law relating to looked after children.
- Effective working between youth offending teams (YOTs) and children's services.
- Key points in the youth justice system where practice can influence outcomes for looked after children.
- Strategies aimed at diverting looked after children from the youth justice system.
- Guidance for those working with looked after children in custody.
- The importance of good leaving care services in preventing offending.

Further good practice is available in the appendices which contain useful information and a series of checklists to aid strategic planning and effective practice in custody and in the community for staff in YOTs and children's services working with looked after children.

The terms 'child' or 'children' are used in this guide to refer to all children under the age of 18. This accords with the definition incorporated into the Children Act 1989 and the United Nations Convention on the Rights of the Child. When discussing older children (generally accepted to be those aged 14 to 17) the terms 'young person' or 'young people' may also be used.

Children and young people who are being looked after by the local authority or who are subject to care orders are referred to as 'looked after children' in line with legal definitions.

The opinions expressed in this publication are those of Nacro.

Chapter 2

Background

There have been various key policies and strategies which have influenced the shape of provision for looked after children today and led to the following:

- A strengthening of legislative responsibilities.
- An increased focus on measures to assess and improve the outcomes for looked after children including the prevention of offending and responses to offending.
- A shift away from the use of residential care towards foster care.
- An increased emphasis on the participation of looked after children in decisions which affect them.

Despite these developments, and whilst entry into care can be a protective factor for many children and a lot of looked after children make a successful transition to adulthood,¹ a disproportionate number still experience poor outcomes in comparison to the general population.

Offending rates

Looked after children come into contact with the youth justice system at a higher rate than the general population: 7.3% compared to 3% of all children and young people.² A survey in 2011 of those in young offender institutions revealed that over a quarter of young men and over half of young women have spent some time in local authority care.³ Data on the proportion of looked after children within secure training centres and secure children's homes is not available, but is likely to be higher because this is where younger or more vulnerable children are accommodated. While there have been reductions in the number of looked after children entering the youth justice system, with a drop from 10.2% in 2000 to 7.3% in 2011,⁴ looked after children are still more than twice as likely to be drawn into the criminal justice system.⁵

The offending rates of looked after children vary in accordance with the length of time spent in care and by the type of placement. Those who have been looked after for 12-18 months are more likely to offend than those who spend longer in care.⁶ In addition, the offending rate of looked after children in foster care is much lower than for those in residential care. In the year to 31 March 2010 the rate of offending amongst children in foster care was 3.6% compared

1 Schofield G, Ward E, Biggart L, Scaife V, Dodsworth J, Larsson B, Haynes A and Stone N (2012) *Looked After Children and Offending: Reducing risk and promoting resilience* Norwich: University of East Anglia

2 Department for Education (2011) *Outcomes for Looked After Children as at March 2011* London: Department for Education

3 Amy Summerfield (2011) *Children and Young People in Custody 2010-2011: An analysis of the experiences of 15-18 year olds in prison* London: HM Inspectorate of Prisons

4 Department for Education (2011) *Outcomes for Looked After Children as at March 2011* London: Department for Education

5 *ibid*

6 Blade R, Hart D, Lea J and Willmott N (2011) *Care – A Stepping Stone to Custody? The views of children in care on the links between care, offending and custody* London: Prison Reform Trust

with 21.4% in residential care.⁷ One of the reasons for this difference is that residential homes are more likely to respond to challenging behaviour by calling the police which increases the likelihood that looked after children will be prosecuted for behaviour that would have been dealt with by parents had it been committed in the family home.⁸

Risk and protective factors

Recent research also offers insights into the different pathways and experiences of looked after children which may put them at greater risk of, or protect them from, offending.⁹ Risk factors that may predict involvement in criminal activity are similar to those that may predict looked after status. Research into offending and residential care identified that the care environment can present a set of risks for teenage boys that reinforces offending behaviour.¹⁰ These include risks relating to the individual young person, the risk of peer dynamics that reinforce offending behaviour, the risks associated with being out of education and the systemic risks of criminalisation when protocols with the police (ie, to use non-criminal responses) are not observed.

Many young people at risk of offending or who have criminal convictions are vulnerable because of past abuse, neglect or unstable living arrangements. Looked after children are also likely to have received poor quality parenting and there is a significant possibility of maltreatment prior to entering the looked after system.¹¹ These factors may impact on their coping skills, including the ability to act appropriately, to express themselves adequately and to conform to social norms. In some instances, troublesome behaviour may arise more from these difficulties than from criminal intent.

Risk factors, however, can be reduced by the presence of protective factors which are recognised as helping to build a child's resilience. Building resilience is a key objective in the care of looked after children. Along with the appropriate support, resilience can help young people to overcome adversity and resist the negative effects created by risk factors.

7 *ibid*

8 The Centre for Social Justice (2012) *Rules of Engagement: Changing the heart of youth justice* London: The Centre for Social Justice

9 Schofield G, Ward E, Biggart L, Scaife V, Dodsworth J, Larsson B, Haynes A and Stone N (2012) *Looked After Children and Offending: Reducing risk and promoting resilience* Norwich: University of East Anglia

10 Hayden C (2010) 'Offending behaviour in care: Is children's residential care a criminogenic environment?' *Child and Family Social Work* Vol 13 (4) pp. 461-472

11 Schofield G, Ward E, Biggart L, Scaife V, Dodsworth J, Larsson B, Haynes A and Stone N (2012) *Looked After Children and Offending: Reducing risk and promoting resilience* Norwich: University of East Anglia

Chapter 3

Laws, regulations and guidance

The laws, regulations and guidance relating to looked after children are complex and are contained in civil and criminal justice legislation. They indicate responsibilities that largely fall to children's services in terms of the care and welfare of looked after children. However, there are also responsibilities that fall to YOTs, particularly at the point of remand and sentence. This chapter sets out the legal obligations and statutory duties of children's services and YOTs in respect of looked after children. It aims to aid different agencies to clarify their roles, ensure that practitioners are able to negotiate the relevant legal complexities and to enable the identification of children who might need special attention and advocacy to ensure they are not disadvantaged. However, this chapter is not intended to be a substitute for the full statutory guidance and regulations which staff should refer to directly when working with looked after children.

United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child provides a framework of principles and provisions across the range of issues concerning children and young people. The UK ratified the Convention in 1991 making it legally binding, although not directly enforceable through domestic courts. Practitioners and managers often have to make difficult decisions regarding the weight to be given to a child or young person's wishes or the extent to which their liberty should be restricted in order to reduce a perceived risk of offending. Where there are problematic competing priorities or the law is ambiguous, the Convention is a particularly useful tool.

The legal framework for looked after children

The main piece of legislation concerning looked after children is the Children Act 1989. It is supported by a comprehensive set of regulations and guidance which were revised in 2010.

Looked after status

The main routes which lead to a child becoming looked after under the Children Act 1989 (s.22) are for them to be either accommodated (s.20) or made subject to a care order (s.31). The local authority only gains 'parental responsibility' for a child or young person by the making of a care order, not by any other measure.¹²

A care order will only be granted if a court dealing in family law is satisfied:

- (a) that the child is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to:
 - the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - the child being beyond parental control.¹³

¹² Parental responsibility is defined as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child and his property' – s.3(1) Children Act 1989.

¹³ See s.31(2) Children Act 1989.

Where a child aged below 16 is 'accommodated' under s.20 of the Children Act 1989, this means that the local authority has provided accommodation as a result of:

- an agreement with a person or persons with parental responsibility¹⁴
- there being no person who has parental responsibility
- the child being lost or abandoned
- the person caring for the child being prevented for whatever reason from providing suitable accommodation or care.¹⁵ (Some children who are prevented from living with a parent do not gain looked after status eg, children subject to custodial sentences.)

The local authority must also provide accommodation in the following circumstances:

- When a child is removed and kept away from home under an emergency protection order or is subject to police protection (as necessary).¹⁶
- When the police request a transfer of detention following charge and pending a court hearing under the Police and Criminal Evidence Act 1984.¹⁷
- When a child is remanded to local authority accommodation with or without conditions or requirements including with a secure requirement.¹⁸
- When a child is made subject to a youth rehabilitation order with a requirement of residence in local authority accommodation.¹⁹
- When a child is made subject to a youth rehabilitation order with a fostering requirement.²⁰

The last four categories are the youth justice pathways through which a young person can become compulsorily looked after and be placed in local authority designated accommodation. The local authority usually has discretion as to where to place a looked after child. This discretion, however, is restricted in the following circumstances:

14 This is commonly the status of children who are already looked after prior to their involvement in the youth justice system. It is often termed 'voluntarily' accommodated (under s.20 Children Act 1989).

15 See s.20(1)(c) Children Act 1989. This provision may be relevant in cases where a bail condition or other ordered requirement results in a child being prevented from living in the care of a parent or previous carer. Magistrates courts (not always a youth court) might not always make any reference to this when deciding upon a bail condition, so it is incumbent on the professionals involved to scrutinise the case to decide if any move should be made with regard to status under the Children Act or any other action. This is likely to be complex and require referral to an appropriate qualified social worker. The implications are considerable (denying the child looked after status where that would be in his or her best interests or, at the other extreme, using looked after status to enable the use of secure accommodation under s.25 Children Act 1989).

16 See s.21 Children Act 1989. The local authority is normally the applicant for an emergency protection order and must accommodate the child after they have been removed from where they were assessed to be at risk of significant harm. Where the police have removed a child under the terms of a police protection order and make a request under s.46 Children Act 1989, and the local authority considers it necessary to safeguard the child, they must provide accommodation.

17 It is a statutory duty of the police to request that a young person be transferred to local authority accommodation (in some cases to secure accommodation). It is the duty of the authority to provide such accommodation. Under s.21(2) Children Act 1989 the local authority 'shall receive, and provide accommodation for children when so requested by the police'.

18 The remand is normally made under s.23 Children and Young Persons Act 1969 although it is s.21 and s.22 Children Act 1989 that specify that a person so remanded is looked after.

19 See s.1(1)(j) Criminal Justice and Immigration Act 2008.

20 See s.1(3)(b) Criminal Justice and Immigration Act 2008.

- In the case of the youth rehabilitation order with a fostering requirement (where this type of placement must be used).
- When a court makes a requirement that the local authority does not place a child or young person with a named person (often a parent) when remanded to local authority accommodation.

Where young people are made subject to a remand to local authority accommodation or to a youth rehabilitation order with a fostering requirement or residence in local authority accommodation requirement, the local authority does not gain parental responsibility. However, those with parental responsibility may not remove the young person from their placement, which they can do if accommodated 'voluntarily' under s.20 of the Children Act 1989. A child or young person who has been remanded to local authority accommodation who absconds from the nominated accommodation has, in legal terms, escaped from custody.

Children living away from home in custodial settings

A judicial review in 2005 of the application of the Children Act 1989 to prison service facilities, commonly known as the 'Munby judgement',²¹ clarified the position that HM Prison Service is subject to the Children Act 1989 and that local authorities have duties to safeguard children held in prison facilities.²² The Children Act 1989 duties are, however, subject to the requirements of custody – for example, a child or young person is unlikely to be removed from prison for their own protection as might be the case in other settings. The duties also apply to secure training centres. Guidance and regulations are available which set out local authority responsibility to looked after children, formerly looked after children and care leavers in custody²³ and these are summarised in chapter 7.

Appendix 1 summarises the changes to care status as a result of criminal justice decisions.

The duties and responsibilities of local authorities to looked after children

In addition to providing or arranging a place to live, the local authority has a range of duties and responsibilities in relation to all looked after children. It must ascertain and take into account the wishes and feelings of the child, parents and other relevant people and safeguard and promote the child's welfare. The local authority is required to assess the child or young person's needs and produce and review a care plan for each child. The preparation of the care plan should involve consulting with other agencies, including education and health authorities.²⁴ For more detail on the duties of local authorities to looked after children and young people, see the relevant guidance and regulations.²⁵

Local authorities have particular responsibilities towards looked after children in custody. This includes arranging visits by a representative (who is not a YOT worker) to children who were looked after but who lose their looked after status when they are sentenced to custody, which means that they are being accommodated by the secure estate rather than by the local

21 *The Howard League v The Secretary of State, Home Department and Department of Health* [2005] EWHC 2497

22 The judgement also led to the creation of social worker posts in young offender institutions.

23 Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 2: Care planning, placement and case review* London: Department for Education

24 See also the detail of the Children Act 2004 with regard to the duties of relevant agencies to co-operate, safeguard and promote children's welfare.

25 Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 2: Care planning, placement and case review* London: Department for Education

authority.²⁶ The local authority formerly responsible for their care must appoint a representative to visit the child. This representative, usually a social worker, will carry out an assessment of the child's needs both whilst in custody and on release which is informed by the care plan, the YOT's assessment and the custodial establishment's assessment.²⁷

The Children (Leaving Care) Act 2000

The Children (Leaving Care) Act 2000 amended the Children Act 1989 to ensure that children are better prepared for the transition to adulthood and identifies children and young people who are entitled to leaving care services (see appendix 3 for more information on how entitlement is defined).

Local authorities are required to produce and review pathway plans to meet the needs of this group and to provide advice, assistance and support while children are looked after and making the transition to adulthood and independent living. A personal adviser must also be provided by the local authority to keep in touch with the young person and ensure that the pathway plan is followed and developed.²⁸

The Children and Young Persons Act 2008 further strengthened the leaving care provisions of the Children Act. It put additional arrangements in place regarding moves from a care placement to accommodation where the Children Act regulations do not apply and placed additional responsibilities on local authorities to financially support care leavers wishing to pursue learning or training programmes (in some instances up to the age of 25). For a full explanation of these duties and responsibilities see the relevant guidance and regulations.²⁹

Revised Children Act 1989 Guidance and Regulations

A suite of volumes of regulations and guidance that accompany the Children Act 1989 set out the requirements for local authorities to promote and safeguard the welfare of looked after children. Whatever the grounds upon which a child becomes looked after, all looked after children are entitled to the same quality and extent of service. The implication of this is that all children and young people who become looked after through criminal justice pathways should have access to the same services as any other looked after child ie, having an allocated social worker responsible for their care planning. The following are particularly useful points of reference.

- The dedicated section in the guidance on care planning.³⁰
- The guidance relating to former looked after children in custody.³¹
- The guidance on transitions to adulthood.³²
- The handbook for independent reviewing officers (see footnote 33).

26 See s.23ZA Children Act 1989.

27 The Visits to Former Looked After Children in Detention (England) Regulations 2010, SI 2010/2797, paragraph 6

28 More information on the personal adviser's role can be found in Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 3: Planning transitions to adulthood for care leavers* London: Department for Education.

29 *ibid*

30 Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 2: Care planning, placement and case review* London: Department for Education

31 Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Local authority responsibilities towards former looked after children in custody* London: Department for Education

32 Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 3: Planning transitions to adulthood for care leavers* London: Department for Education

The independent reviewing officer

Independent reviewing officers play an important role in ensuring that care planning is effective and that children and young people's wishes and feelings are taken into account. The independent reviewing officer has an explicit duty to look after children at risk of offending or involvement in the criminal justice system as set out in annex 5 of the handbook for independent reviewing officers.³³ This duty includes the following situations:

- If, having been advised of any arrests or of the charging of a looked after child, they consider the care plan should be amended, they should request a review, especially if it is a serious offence or there is persistent offending.
- Where there is intervention planning for those who become looked after by a youth rehabilitation order requirement.
- Where there are children and young people who continue to be looked after in custody and who leave care whilst in custody.

The independent reviewing officer's role will extend to reviewing the care of children who become looked after as a result of being remanded when the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is fully implemented.

As they are expected to exercise their independence, independent reviewing officers are well placed to challenge the local authority if they are failing to provide appropriate support for any looked after child, including those in custody. Their role in relation to children and young people in custody is discussed in chapter 7.

The sufficiency duty

Section 22G of the Children Act 1989 (often referred to as the 'sufficiency duty') places a requirement on a local authority to provide accommodation for looked after children within their area which is not just 'sufficient' in numerical terms, but also in meeting the diverse needs of children and young people who may require services, including accommodation, from the local authority. This is relevant for those requiring short-term access to accommodation, for example in the case of a remand to local authority non-secure accommodation, as well as provision for those with much longer-term needs.³⁴

Children's homes regulations

The regulations for children's homes (as amended) state children's homes must have a clear and accessible behaviour management policy which sets out what is acceptable and unacceptable behaviour and how staff are to manage challenging behaviour.³⁵ This has implications for the management of antisocial behaviour and offending in any placement.

In addition, National Minimum Standard 3.22 states children's homes' approach to care should minimise the need for police involvement in dealing with challenging behaviour and avoid the

33 Department for Children, Schools and Families (2010) *IRO Handbook: Statutory guidance for independent reviewing officers and local authorities on their functions in relation to case management and review for looked after children* London: Department for Children, Schools and Families

34 Department for Children, Schools and Families (2010) *Sufficiency: Statutory guidance on securing sufficient accommodation for looked after children* London: Department for Children, Schools and Families

35 Available at www.legislation.gov.uk/ukSI/2001/3967/contents/made and www.legislation.gov.uk/ukSI/2011/583/made

unnecessary criminalisation of children.³⁶ It states there should be procedures and guidance on the use of police call-outs agreed between the police and the home (see page 20 also).

The statutory responsibilities of YOTs

The statutory aim of the youth justice system is to prevent offending by children and young people.³⁷ This has evolved into the prevention of first-time offending as well as the prevention of reoffending. Although children's services take a lead in the corporate parenting role, they cannot discharge their duties effectively without co-operation from other mainstream services and relevant partners such as education, health and, in relation to the prevention of offending, YOTs and the police.³⁸

The YOT is a multi-agency team bringing together on a statutory footing professionals from children's services, education, the police, probation, health, housing and other agencies. It has a number of specific responsibilities and duties as listed below. YOTs have a duty to co-operate with children's services in making arrangements to improve the well-being of children in the local authority³⁹ and a duty to co-operate in the establishment and operation of local safeguarding children's boards.⁴⁰ The statutory role of the YOT is as follows:⁴¹

- To prevent offending in the first instance through appropriate contribution to local preventative strategies and services.
- To co-ordinate appropriate adult services for children and young people arrested by the police.
- To provide court-based services.
- To carry out assessments on all children and young people coming into the youth justice system to determine why they offended.
- To provide bail supervision and support services, and support remands to local authority accommodation.
- To deliver intervention programmes for children and young people who have received a final warning from the police.⁴²
- To manage referral orders, including the recruitment, training and co-ordination of volunteer youth offender panel members and their meetings, and supervise contracts.
- To supervise children and young people who have been the subject of a range of court order disposals and community penalties.

36 Department for Education (2011) *Children's Homes: National minimum standards* London: Department for Education

37 See s.37 Crime and Disorder Act 1998.

38 The Children Act 2004 (s.10 and 11) gave statutory weight to this duty for agencies to co-operate, in particular to safeguard and promote the welfare of children in their area.

39 See s.10(4) Children Act 2004.

40 Local Safeguarding Children Boards Regulations 2006, SI 2006/90

41 See also Youth Justice Board (2012) *YOT Functions and Statutory Requirements*, available at: www.justice.gov.uk/downloads/youth-justice/yjb-toolkits/structure/yot-minimum-requirements.pdf [sic].

42 This will be replaced by the system of youth cautions to be introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

- To supervise children who receive a custodial sentence and to work with the secure establishment to plan their sentence and to plan for their resettlement.⁴³

Accessing placements

As mentioned, there are four criminal justice pathways through which a young person can become looked after (see page 6). When these situations arise either in the police station or at court, YOT staff need to know what processes and procedures to follow to obtain an appropriate placement from the local authority.

When a young person appears in court, YOTs are required to assess who might be denied bail and on what grounds. This provides a basis for liaising with defence solicitors and the Crown Prosecution Service about community alternatives, such as bail supervision and support or bail with intensive supervision and surveillance or, if those options are unlikely to allay concerns, to consider a remand to local authority accommodation and to liaise with the local authority about placement options. Current bail and remand options are set out in appendix 2.

YOT court duty staff should advocate for the most appropriate level of tariff and should ensure that looked after children are not disadvantaged from the full range of bail options. The degree of restriction imposed should depend on the seriousness of the alleged offence, the assessed level of risk and whether any bail or remand conditions are necessary. If a young person is already looked after, the court may consider that to make a remand to local authority accommodation or impose a bail condition regarding accommodation will add nothing in terms of providing additional services to support the young person in the community, and may not be effective in preventing offending on bail. Children's services and YOTs should ensure that these risks are minimised through knowledge of the law, effective and proactive court practice, clear proposals on how the objections to bail would be addressed in the community and by providing a supportive presence to the young person in court.

The accommodation requirements that can be attached to a youth rehabilitation order relate to provisions that will become part of a young person's community sentence. As a result, these options will have to be proposed in a pre-sentence report that is prepared and presented to the court by the YOT. A YOT will need to have negotiated with the local authority using their referral and planning processes to establish the availability of accommodation that will meet the requirements and to have obtained agreement that this accommodation can be accessed before such a proposal can be made in a pre-sentence report. Additionally for any looked after child, relevant information about their family history and the local authority's plan for their care, including how their placement is expected to respond to their needs, should be obtained from children's services for inclusion in a pre-sentence report in order to give the court a fully informed picture of the child or young person's situation and circumstances.

The single remand order

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has created a single remand order for those aged 12 to 17. The purpose is to make remand arrangements more compliant with the United Nations Convention on the Rights of the Child by extending the option of a remand to local authority accommodation to 17 year olds in the event of bail being denied, meaning that these children will be looked after. Remands into youth detention accommodation will still occur if either of two conditions are met. The first relates to the

⁴³ See s.38 Crime and Disorder Act 1998.

seriousness of the offence and the second as to whether there is a realistic prospect that a custodial sentence will be imposed.

There are a number of implications for local authorities: the cost of remand placements will be transferred from the Youth Justice Board to local authorities; local authorities will be responsible for ensuring there is accommodation available to meet the needs of 17 year olds; and there will be greater involvement of children's services in care planning for this age group. There will be phased implementation of these provisions from November 2012 onwards.

Chapter 4

Operational and strategic issues for YOTs and children's services

Although some responsibilities for looked after children can be fulfilled by individual agencies, there are also many shared responsibilities which require a high degree of collaborative working between agencies, an awareness of each other's roles and responsibilities and the pursuit of common aims. YOTs and children's services should have a joint priority to prevent offending by looked after children and to help them to achieve a law-abiding route into adulthood. Arrangements for looked after children should be reflected in local planning processes and be supported by a range of working practices that reflect this joint commitment and provide a means through which close working relationships can be forged and appropriate services delivered.

The first part of this chapter examines some operational issues arising out of the legislative base set out in the previous chapter. The second part of this chapter describes the importance of YOTs and children's services adopting a strategic approach to the prevention of offending. A checklist aimed at developing a more strategic approach is available in appendix 4. For more information on operational issues, see appendix 5 which provides a checklist of practices and procedures agencies should implement when working with looked after children who have offended.

Defining responsibilities

It is a mandatory requirement that there should be a local authority social worker located in the YOT. The role and functions of this worker are, however, not specified in statute and there are variations in local arrangements. A social worker located in the YOT who can provide an operational link between the services can be extremely beneficial, and some local authorities have created posts which span responsibility for looked after children between children's services and the YOT.

Social workers in YOTs are primarily concerned with activities that relate to the prevention of offending and do not undertake the broader welfare and social care functions of those located in children's services. As welfare and justice functions are often delivered as separate activities, it is extremely important that there is clarity about who undertakes what role.

To work effectively, YOTs and children's services need to have an understanding of their own and each other's roles and responsibilities. For example, in order to deal with risks that might prevent offending, YOTs need to know what support children's services can provide to children and families. They also need to be aware of the requirements of care planning processes and how to contribute to them.

Children's services should be familiar with the requirements of criminal court orders and legislation as they relate to looked after children who are in the youth justice system. Relevant staff should be familiar with the services and interventions provided by YOTs to young people who are at risk of offending, how to make referrals to them and also the requirements of court orders, such as the reporting arrangements, duration and the content of supervision plans.

Clarity about the responsibilities of YOTs and children's services in cases where looked after children commit offences is essential. Even where the YOT case manager is a qualified social

worker, they are not responsible for care planning, visiting the child and arranging placements. These tasks remain the responsibility of children's services. Each looked after child should have an allocated social worker from within this service regardless of whether they have acquired looked after status as a result of their offending behaviour. The remit of YOT staff in relation to looked after children will include the following:

- Managing the youth justice aspects of cases of looked after children who have offended, and dealing with issues affecting their welfare.
- Being involved at all relevant stages of the looked after process (planning and review etc) to ensure alignment with YOT intervention plans and being aware of any issues that might impact on the delivery of specific interventions.
- Ensuring that relevant partner agencies, notably health, education and housing, are involved in the planning and delivery of youth justice services.
- Liaising between the YOT and children's services in general.

Assessment, planning and review

The assessments used for looked after children and those used by YOTs have some degree of overlap, but follow different structures and have different priorities. YOTs assess the factors that influence a young person's offending behaviour so appropriate interventions can be identified and supervisory arrangements be put in place. Children's services undertake assessments of looked after children at each stage of their journey through care in order to develop plans that respond to the full range of their needs.

Sharing information between YOTs and children's services

Information sharing ensures that children in need of support are identified and it enables agencies to view and respond to the child's needs over time and across agencies whilst avoiding duplication and repeat assessments. YOTs and children's services need effective arrangements in place so they can share information about young people they are working with in a timely and appropriate manner. Arrangements should not be dependent on personal working relationships, but based on protocols between YOTs and children's services agreed at a senior management level which practitioners are aware of and follow.

Information about young people is invariably held in different data systems; ideally YOTs and children's services should be able to access each other's databases by whatever means are determined locally. The need for this is as follows:

- To properly identify the status of the young person, particularly at the start of any contact, whether a court order or entry into care.
- To establish the nature and degree of agency involvement.
- To become aware of any factors that might impact on (children's services) care planning and management arrangements and (YOT) assessments and intervention plans.

When sharing information, both at strategic and inter-agency operational levels, certain practice should be followed:

- It is essential that case recording is up to date, adequately detailed and properly documented so that any new worker or duty worker can develop a well informed view of the needs and behaviour of the child.
- It is important to consider the extent of the information to be shared. In some cases, a partner agency might just need to know the fact that another agency is involved with a child. In other cases, agencies working together to deliver services may require access to all the information that is available on the child.
- It is also useful to think about what information might best help a partner agency to tailor its service to the needs of a young person. The agency may, for example, be able to provide better care if they know about a child's history prior to becoming looked after. The issue of informed consent and involving the young person is particularly important in these sorts of cases.
- It is essential to talk through with the child situations where there is tension between the local authority's duties (for example to maintain community safety and to care for children subject to antisocial behaviour measures) or between the local authority's duties and the child's wishes (for example, over whether the child lives with a parent).

Guidance prepared by the Youth Justice Board should also be taken into account.⁴⁴

Sharing information with other local authority areas

The sharing of information about children looked after by authorities other than the YOT's 'parent' authority is often inadequate and YOTs have reported that children looked after by another authority have appeared in their local court without their prior knowledge.⁴⁵ Children's services have a duty to notify placements in another locality and should routinely pass relevant information to their local YOT.⁴⁶

The Youth Justice Board's national protocol on case responsibility provides practice advice for YOTs with regard to their responsibilities to looked after children who are placed in their locality.⁴⁷ It advises that looked after children are the legal responsibility of the placing local authority and the YOT in this authority should retain overall case management responsibility. The host YOT (which refers to the YOT that will be managing the young person's case whilst they are resident in a locality other than their home area) should liaise with the home YOT about the delivery of youth justice services to the young person.

Regular agency contact

YOTs and children's services need to meet at an operational and strategic level to share information, update each other on service developments, co-ordinate interventions in cases that are jointly worked, identify the separate and joint responsibilities and develop integrated intervention plans for looked after children. The principle of inviting children's services staff who are responsible for looked after children and YOT workers to each other's meetings should be established practice.

44 Youth Justice Board and Association of Chief Police Officers (2003) *Sharing Personal and Sensitive Information in Respect of Children and Young People at Risk of Offending: A practical guide* London: Youth Justice Board

45 Nacro (2003) *Links between YOTs and Social Services* London: Nacro

46 The Care Planning, Placement and Case Review (England) Regulations, SI 2010/959, paragraph 11(2)(d)

47 www.justice.gov.uk/downloads/youth-justice/improving-practice/national-protocol-case-responsibility-eng.pdf

The strategic location of the YOT – originally intended to be in the local authority’s chief executive’s department – can also support integrated working practices. In recent years the trend has been to relocate YOTs strategically as well as physically to children’s services departments to improve planning and partnership working.

A strategic commitment to prevention

The commitment of YOTs and children’s services to the prevention of offending by looked after children should be fully reflected in local authority policies, strategies and plans. These documents should be multi-agency in nature, involving education, health, housing and other local services that can help and support looked after children and young people. Plans should also be integrated. For example, the annual youth justice plan should be integrated within wider planning structures, in children’s services strategic documents, joint strategic needs assessments, as well as within health and well-being plans, and local authority single plans. Other important measures include the following:

- Having jointly operated prevention strategies and multi-agency prevention services to refer looked after children to. These should not just be criminal justice related responses, but those that address any identified needs which could make looked after children more likely to offend.
- Putting protocols in place between the police and children’s home staff to prevent inappropriate criminalisation.⁴⁸ See chapter 5 for more information.
- YOTs should ensure that any local arrangements with the police for the diversion of cases from formal prosecution (such as triage in custody suites) take into consideration the fact that offending by looked after children may be first-time or low-level offending.

In addition, a senior representative from children’s services should be a member of the YOT management board and be of sufficient seniority to commit resources and ensure there is the necessary strategic interface and interaction between the services.⁴⁹ YOTs have reported that children’s services representation at this level is extremely beneficial.⁵⁰

Monitoring and data

Information about looked after children should be gathered and monitored by local authorities to inform strategic planning and to monitor practice and outcomes for this group of young people. This information may be relevant to those commissioning care in children’s homes, particularly if the practices of children’s home providers are putting young people at risk of offending.

Baseline data might include information about age, gender, type of offence and differentiation between first-time and repeat offending. Although sometimes difficult to obtain, information should be gathered about children and young people placed out of their home area. YOT management boards and children’s services senior management meetings should regularly review this information and monitor outcomes for children and young people they are responsible for.

48 See s.3.22 of Department for Education (2011) *Children’s Homes: National minimum standards* London: Department for Education.

49 The location of the YOT in the local authority’s corporate structure is also likely to determine who chairs the management board, with those located in children’s services tending to be chaired by a representative from that agency.

50 Hopkins M, Webb S and Mackie A (2010) *A Review of Youth Offending Teams and Children’s Services’ Interaction with Young Offenders and Young People At Risk of Offending* London: Youth Justice Board

Operational protocols

It is vital that YOTs and children's services have protocols in place which cover areas of working where joint co-operation is necessary, contain a clear description of staff's roles and responsibilities, and specify lead responsibilities.

Protocols should exist in the following areas:⁵¹

- Referral arrangements between the YOT and children's services.
- Processes for referring looked after children to prevention services.⁵²
- Bail and remand arrangements as they relate to the Police and Criminal Evidence Act 1984.
- Court bail and remand arrangements.
- Placement arrangements for children becoming looked after through youth justice pathways.
- Sentence planning for children in need, looked after children and those the YOT has identified as vulnerable.
- Arrangements for care leavers.
- Information sharing to inform assessments relating to young people subject to court orders.

Building know-how

There are a number of ways in which to increase staff's knowledge of effective joint working, as well as giving them a greater understanding of how they can contribute on an individual basis to the prevention of offending by looked after children, as follows:

- The co-location of staff.
- Staff visits as part of induction, including shadowing arrangements.
- Reciprocal staff secondments and peer exchanges.
- Joint activities – training and staff conferences.
- Formal points of contact, such as attendance at each other's planning meetings and reviews.
- Developing and regularly reviewing protocols to reflect individual and collective responsibilities.
- Providing presentations and awareness raising sessions on relevant topics.
- Joint involvement in prevention forums – as referrers to prevention panels, members of them and as deliverers of services to them.

⁵¹ See also annex B in Department for Education (2010) *The Children Act 1989 – Guidance and Regulations: Local authority responsibilities towards former looked after children in custody* London: Department for Education.

⁵² *ibid*

- Auditing of cases where both services have been involved – in particular for looked after children where the YOT has been the home and host YOT.

Training merits particular comment. Staff in YOTs, children's services and other agencies receive professional and vocational training and qualifications according to their discipline. But for all those working with young people (including foster carers and children's home staff) there should also be training on child development, in particular how young people develop emotionally and socially, and an appreciation of the impact on children of abuse, neglect, loss and of growing up without the love, care and support of a parent or guardian.

This training should develop awareness and understanding of the needs of looked after children, the potential risk factors that influence offending behaviour, the indicators of early signs of a risk of reoffending, and the interventions that are most effective in deterring young people from committing offences, as well as meeting wider needs. Research carried out by Nacro found that when looked after children's services and YOTs trained alongside each other, it encouraged not only joint ownership of a commitment to preventing offending by looked after children, but also led to lower rates of offending by looked after children.⁵³

53 Nacro (2003) *Links between YOTs and Social Services* London: Nacro

Chapter 5

Diverting looked after children from the youth justice system

This chapter sets out some of the strategies which can be employed to divert children and young people from the youth justice system. It considers the importance of the placement decision, promoting positive behaviour and using diversionary strategies which handle incidents in a proportionate way through the setting up of protocols and the use of restorative approaches. Finally, it discusses recent innovations in foster care.

The placement decision

Achieving good outcomes for looked after children in terms of their welfare, well-being and the prevention of offending is linked to the quality of placements and the stability and support they offer. Whilst the average child moves home twice during adolescence, looked after children are likely to move to different residences with greater frequency.⁵⁴ Approximately a quarter will live more than 20 miles away from their home area and one in three will live outside their home authority.⁵⁵

Of relevance here is a duty under the Children Act 1989 which requires local authorities to do what is 'reasonably practicable' to place young people in their home area. Family links are a protective factor which can build resilience and reduce the risk of offending⁵⁶ and distant placing from home can be disruptive, not only to family relationships but also to the young person's education and connections to other sources of support in their home community. The requirement imposed on local authorities by the guidance relating to sufficiency has arguably strengthened this notion (see also page 9).⁵⁷

When deciding where to place a child or young person, the local authority must consider the home's statement of purpose and the staff's ability to meet the needs of the child in question. Factors to consider include whether there is any information about the home's approach to managing antisocial and criminogenic behaviour. Inspection reports on children's homes might also help to inform the placement decision. Similarly, if placing in foster care, the carer's approach to behaviour management and the inspection report on the fostering service will be important factors.

Promoting positive behaviour

Staff in residential care and foster carers need to be aware of effective approaches to behaviour management which can promote positive behaviour and prevent troublesome behaviour from escalating into something more serious. These are as follows:⁵⁸

- Creating a positive environment in which young people feel they can talk through any problems they are experiencing, particularly with their peers or others.

54 Department for Education (2011) *Children Looked After in England (Including Adoption and Care Leavers): Year ending March 2011* London: Department for Education

55 *ibid*

56 See s.23(7)(a) Children Act 1989.

57 Department for Children, Schools and Families (2010) *Sufficiency: Statutory guidance on securing sufficient accommodation for looked after children* London: Department for Children, Schools and Families

58 For further information, see Department for Education (2011) *Children Act 1989 Guidance and Regulations – Volume 5: Children's homes* London: Department for Education.

- Creating positive activity and interactions and helping young people to manage strong feelings and to adopt pro-social behaviour.
- Encouraging engagement with pro-social friends.
- Using behaviour management approaches, including reward schemes and also the use of sanctions.
- Setting clear, consistent boundaries outlining what type of behaviour will elicit what type of response.
- Developing and implementing behaviour management plans.
- Using de-escalation techniques.
- Promoting preventative and restorative approaches.

Given the age, profile, placement history and the needs of children placed in children's homes,⁵⁹ they are likely to be a very challenging group and staff will need to have the skills to manage conflict without having to resort to police involvement.⁶⁰

Diversivory strategies

One of the main concerns about the placement of young people in residential care is inappropriate criminalisation through police and court involvement as a response to challenging behaviour or minor offending while in residence. If the threshold for calling the police to deal with looked after children is low, this widens the gap between the number of reported offences by looked after children and by children and young people generally. However, there has been a growing awareness of the need for strategies to manage these incidents in a proportionate way, and a number of useful approaches have emerged. These include the following:

- Developing protocols and relationships with the police for the reporting of offending.
- Promoting positive behaviour strategies in the placement.
- Using restorative approaches which can help residential staff to respond to incidents.

Protocols with the police

A Home Office report on young people in local authority residential care found evidence of over-reporting to the police of incidents, and suggested that the threat of police involvement was sometimes used as a means of control.⁶¹ The report advised one test of whether to call the police should be: would this be reported in the family home? Another consideration should be whether there is a real threat to the safety of other residents or staff. The report concluded that protocols with the police would be beneficial in achieving considerable reductions in reported incidents and offences, and would encourage staff to take the following into consideration:

59 For more information on the use of children's homes, see Department for Education (2012) *Children's Homes in England Data Pack* London: Department for Education.

60 Berridge D, Biehal N and Henry L (2012) *Living in Children's Residential Homes* London: Department for Education

61 Home Office Research, Development and Statistics Department (2004) *Preventative Approaches Targeting Young People in Local Authority Residential Care* Home Office: London

- The context of the incident and what might be an appropriate response.
- How difficult behaviour should be managed.
- How to respond more consistently to certain types of incidents.
- The development of restorative approaches to problematic behaviour.

Making a clear distinction between problematic behaviour and criminal behaviour is clearly a starting point. Children's home providers should establish a presumption that, wherever possible, efforts will be made to address problematic behaviour through professional help and support and without recourse to the criminal justice system unless absolutely necessary. A number of local authority areas have developed protocols for this purpose, including one between Bradford Police, Bradford YOT and Children's Social Care⁶² and others between relevant local authorities and Sussex,⁶³ Hampshire⁶⁴ and Staffordshire⁶⁵ police forces. Protocols for managing offending in children's homes are most likely to be effective when there is also a positive working relationship with police officers, where protocols and liaison with the police are readily accepted and where training on restorative approaches to incidents in children's homes has been fully provided.⁶⁶

Use of restorative approaches

The use of restorative approaches in children's homes is regarded as a good way of preventing the escalation or repetition of difficult behaviour and providing an informal way of resolving problems that might otherwise be reported to the police.

Restorative approaches encourage young people to realise the impact of their offence or behaviour and deter them from similar behaviour in the future.⁶⁷ The approaches should have a problem-solving focus rather than being punitive in nature. They traditionally work by bringing together the victim (with their consent) and offender and encouraging a dialogue between the two parties. The victim can describe the impact of the offence on them, and the offender can explain why they offended and apologise for the damage and distress they caused. This approach leads to a greater understanding on both sides about the cause and effect of the offending.

Although the models adopted in children's homes have the same principles, they tend to be more informal in nature than formal victim-offender conferencing. It is suggested that restorative approaches in residential settings need to be conducted in a different way to those traditionally associated with the criminal justice system. This is because children's homes are more akin to a domestic environment, where relationships are more intimate and intense and the perpetrator and victim know each other. As a result, informality and the development of conflict resolution processes (sometimes described as relational conflict resolution) are used.⁶⁸

62 http://bradfordchildcare.proceduresonline.com/chapters/pr_missing_res_homes.html

63 www.sussex.police.uk/media/1475679/joint_protocol_lac.pdf

64 www3.hants.gov.uk/proc3208.doc

65 www.staffsscb.org.uk/NR/rdonlyres/6C9D5BF6-29B4-42CB-BACB-78EDC71DD866/67773/MicrosoftWordJOINTPROTOCOLTOREDUCELOOKEDAFTERCHILD.pdf

66 Schofield G, Ward E, Biggart L, Scaife V, Dodsworth J, Larsson B, Haynes A and Stone N (2012) *Looked After Children and Offending: Reducing risk and promoting resilience* Norwich: University of East Anglia

67 Sherman L, Strang H and Newbury-Birch D (2008) *Restorative Justice* London: Youth Justice Board

68 Littlechild B and Sender H (2010) *The Introduction of Restorative Justice Approaches in Young People's Residential Units: A critical evaluation* London: National Society for the Prevention of Cruelty to Children

Mediation which focuses on the resolution of disputes and allows both parties to express their views and to discuss how problems can be resolved is also an approach which can be used. Another method is informal restorative meetings in which a member of staff who has a good rapport with the young person finds ways of enabling them to face up to the consequences of their behaviour, as well as helping them to find a suitable way of making reparation. In some residential settings, in appropriate circumstances, young people conduct the process with an adult present to mediate if necessary.⁶⁹ Working restoratively in children's homes has been found to have a number of beneficial effects:

- It helps young people to learn to manage their anger.
- It gives them a sense of responsibility and guilt.
- It helps them to understand that actions have consequences.
- It is a means of acknowledging the young person and giving them a voice.
- It makes them feel they are part of a process.
- It helps them to develop different responses to different situations.
- It helps them to develop empathy and build relationships.⁷⁰

When effectively implemented, the use of restorative approaches in children's homes can reduce police call-outs by around a fifth.⁷¹ One particular local authority (Norfolk) has instigated training in restorative approaches in its residential units as part of a wider initiative to reduce the number of looked after children in the criminal justice system and to develop better ways of working with children in residential care.⁷² This has led to the number of looked after young people charged with criminal offences dropping by half over a two-year period following the introduction of restorative practices in children's homes.⁷³ In order to effectively and systematically deliver restorative approaches, appropriate training must be delivered to all staff in children's homes, both on induction and on a refresher basis.

Innovations in foster care

Local authority policy has increasingly favoured foster care rather than residential care, and substantially more children and young people are now fostered than placed in children's homes.⁷⁴ There have been a number of initiatives to develop dedicated and specialist resources for young people who have antisocial behaviour problems or as alternatives to a remand in custody or a custodial sentence, and to examine their impact on offending behaviour. Latterly, this includes multi-dimensional treatment foster care (developed in the USA). This has been piloted in two forms in England:

69 *ibid*

70 *ibid*

71 *ibid*

72 Norfolk County Council (2012) *Restorative Approaches in Norfolk: Annual report 2011-2012*, available at www.restorativejustice.org.uk/resource/restorative_approaches_in_norfolk_annual_report_201112/

73 www.communitycare.co.uk/Articles/11/09/2011/117409/how-restorative-justice-can-improve-relationships-in-childrens-homes.htm

74 The latest Department for Education figures indicate that the placement choice for 74% of looked after children is foster care compared to 9% for residential care.

- The Intensive Fostering Pilot Programme promoted by the Youth Justice Board. This comprised three projects: Wessex, Staffordshire and part of London.
- The Multi-Dimensional Treatment Foster Care for Adolescents (MTFC-A) pilot involving 18 local authorities.

Both pilots included support from a multi-disciplinary team and the development of behaviour management plans for each young person. There were some promising outcomes for those on the first pilot, including better engagement with learning and the reduction of reconviction rates a year after placement along with the gravity of the offending.⁷⁵ However, children and young people who had engaged in the MTFC-A pilot did not show any significant differences in the recorded offending rates, although those with significant antisocial behaviour problems tended to do better with this type of support than those in other care placements. This might therefore be an appropriate target group for this type of programme if it were to be replicated on a wider scale.⁷⁶ There are now a number of sites delivering multi-dimensional treatment foster care. Auditing of the work of these sites at the end of March 2010 shows that offending behaviour (cautions or convictions) for young people on the programme reduced between entry and exit compared with the previous year.⁷⁷ For those successfully completing the programme and moving to less intensive placements (for example, long-term foster care) offending behaviour reduced significantly.

75 Biehal N, Kay C, Green J, Bonin E and Beecham J (2010) *A Report on the Intensive Fostering Pilot Programme* London: Youth Justice Board

76 Biehal N, Dixon J, Parry E, Sinclair I, Green J, Roberts C, Kay C, Rothwell J, Kapadia D and Roby A (2012) *The Care Placements Evaluation: Evaluation of multi-dimensional treatment foster care for adolescents* London: Department for Education

77 National Implementation Team (2011) *MTFCE Multi-Dimensional Treatment Foster Care in England: Annual project report 2010*, available at www.mtfce.org.uk/reports/MTFCE%20th%20Annual%20Progress%20Report%202010%20Final2.pdf

Chapter 6

Key intervention points in the youth justice system

There are a number of key points in the youth justice system which can influence the path of a looked after child. These occur at the police station, at court, during community sentences, during custody and also when YOT practitioners make assessments, plan interventions and supervise young offenders. There are a number of issues which can influence decisions affecting looked after children as follows:

- Police practices and the use of discretion in relation to charging for minor or first time offending.
- Awareness and application of the guidance for Crown prosecutors regarding the charging decision for looked after children.
- Provision of the necessary support for looked after children as they move through the youth justice system.

These matters are discussed in the first part of this chapter.

The second part of this chapter looks at positive practice which can be adopted to ensure looked after children are not unfairly treated at any point in the youth justice system because of their status, and provides a list of prompts to help practitioners identify and address potentially difficult issues.

Police practices and the use of discretion

There has been a substantial change of policy focus in recent years in relation to how first-time and low-level offending is dealt with, which has had a significant impact on whether children and young people are drawn into the formal criminal justice system. There has also been an increased emphasis on the use of restorative disposals to deal with low-level and antisocial offending, including the pilot of the youth restorative disposal between 2008 and 2009 and the extension of the conditional caution to those aged under 18.⁷⁸ The development of triage and pre-court diversion initiatives in police stations arising out of the *Youth Crime Action Plan 2008*⁷⁹ also contributed to a wide range of diversionary opportunities.

These changes and the resurgence in the use of informal measures have allowed more room for discretion and the use of professional judgement when deciding whether to prosecute. In line with this and the current government's strategic priorities to reduce the number of first-time entrants to the youth justice system, there are also proposals contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to replace the current system of use of police reprimands and final warnings with a three-tier system of youth cautions, youth cautions with voluntary conditions, and youth conditional cautions. This would allow a young person who has previously been warned or convicted to receive another pre-court disposal or

78 See s.48(1) Criminal Justice and Immigration Act 2008.

79 HM Government (2008) *Youth Crime Action Plan 2008* London: HM Government

a restriction which currently applies, thereby reducing the potential for escalation through the criminal justice system.⁸⁰

Protocols between the police, children's services and YOTs should reflect these more flexible arrangements, while also considering the effect on looked after children. In addition wherever possible and appropriate, practitioners (in children's services and YOTs) should ensure the application of police discretion, problem-solving strategies and courses of action beyond formal criminal justice responses as a first response in cases involving looked after children.

Guidance for prosecutors

In 2009 The Crown Prosecution Service published guidance on the prosecution of youth offenders which has a dedicated section relating to offending in children's homes and how such matters should be dealt with.⁸¹ This reserved the decision to prosecute a looked after child for someone who is an appropriately trained youth specialist and senior Crown prosecutor. 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.

In deciding whether or not to prosecute in incidents involving offences in children's homes, there are a number of factors which should be taken into account. These include reviewing the behaviour management policies of the home, how they have been applied to the incident in question and why the decision to call the police (rather than deal with the matter in any other way) was made. However, despite the guidance, there is evidence to suggest that prosecutors and courts are not always aware of its existence or choose to act contrary to the guidance.⁸²

Support at the police station and at court

It is crucial to secure adult support and representation for looked after children if they become involved in a police investigation. The adult should be a reliable person who can support the child both during the investigation and afterwards. In deciding which person is best placed to perform this role, the young person should be consulted. An important reason for adult support is that many of those involved in the criminal justice system have difficulties in communicating, and as a result may need help to be able to understand and engage with the process.⁸³

If the young person is arrested and detained during the police investigation they will be entitled to an 'appropriate adult' who should be sufficiently skilled to undertake this role.⁸⁴ A legal representative must be provided in all cases where a looked after child is detained in a police investigation. The appropriate adult and legal representative can make representation relating to the decision to charge. Awareness of The Crown Prosecution Service guidance (see footnote 81) would be useful in this process.

Each looked after child is entitled to support from their corporate parent when they appear in court. This should be provided by someone who is responsible for their care, who is

80 Ministry of Justice (2010) *Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders* London: Ministry of Justice

81 www.cps.gov.uk/legal/v_to_z/youth_offenders/index.html

82 The Centre for Social Justice (2012) *Rules of Engagement: Changing the heart of youth justice* London: The Centre for Social Justice

83 Nacro (2011) *Speech, Language and Communication Difficulties: Young people in trouble with the law* London: Nacro

84 Code C 1.5 of the accompanying codes of practice to the *Police and Criminal Evidence Act 1984*.

knowledgeable about their situation and circumstances and can make decisions on behalf of the local authority. The child's wishes should also have a bearing on this. Research undertaken by Nacro found that the majority of looked after children appear in court accompanied by an adult, but this is not true for every looked after child.⁸⁵

Magistrates express concern when a child appears before them without an adult because it places them at a disadvantage. It can have significant consequences if there is no one able to respond to questions about the young person's circumstances, the context of their offending behaviour and to identify what help and support can be made available to them.⁸⁶ Children placed in a YOT area by another local authority are more likely to appear without an adult to support them.⁸⁷

Reviewing practice

There should be periodic case file audits conducted by senior managers of services provided to looked after children by YOTs and children's services to establish how well services are being delivered.

Practitioners should ensure that informal, restorative and pre-court diversion is used to avoid the criminalisation of looked after children for minor offences. They should also ensure that all bail, remand and sentencing options are available for looked after children.⁸⁸ In addition, practitioners should be sensitive to the treatment of information relating to care history and the possibility of it having negative connotations in the court setting.

The following prompts are intended to highlight some possible issues that may indicate the unfair treatment of looked after children and should help practitioners to identify and address any areas of potential difficulty.

Police detention

- Are police decisions about whether to allow a child to return to their current address influenced by the fact that they are already a looked after child?
- Are police decisions to prosecute, hold for court or refuse bail related to problems with the placement if these become apparent during the period of detention?
- Are looked after children arrested at night viewed as absconding, whereas other children might be seen as just being out late? In subsequent decisions, absconding could be presented as an aggravating factor and an indication that bail conditions will not be met.
- Where a child is already looked after, is the same consideration given to a transfer to non-secure local authority accommodation as for any other child or young person?
- When a looked after child is arrested and alleged to have committed an offence, is thought

85 Nacro (2003) *Links between YOTs and Social Services* London: Nacro

86 Schofield G, Ward E, Biggart L, Scaife V, Dodsworth J, Larsson B, Haynes A and Stone N (2012) *Looked After Children and Offending: Reducing risk and promoting resilience* Norwich: University of East Anglia

87 Criminal Justice Joint Inspection (2011) *Not Making Enough Difference: A joint inspection of youth offending court work and reports* London: HMI Probation

88 For example, not being bailed after detention in a police investigation, not receiving a remand to local authority accommodation when denied bail at court, not receiving a youth rehabilitation order with a requirement of residence in local authority accommodation or a fostering requirement.

given to a possible link between offending and the child's vulnerability eg, possible sexual exploitation?⁸⁹

- What route will be used to pass relevant information to the child's personal independent reviewing officer?

Diversion from prosecution

- Does the local authority responsible for the child or young person advocate for them when diversion from prosecution is under consideration?
- Is consideration given to whether there are differences in the way looked after children are dealt with, including differences in pre-court interventions?
- Are looked after children properly identified as such by police and YOTs at an early stage, with appropriate communication with children's services in the local authority responsible for the child's care?

Bail and remand at court

- Do prosecution and defence lawyers, as well as courts, fully understand the issues affecting looked after children and is there an assumption that all children's services and looked after services, including remand to local authority accommodation options, have been exhausted when they have not been?
- Is a looked after child missing out on options that make provision for looked after status or missing out on other local authority services? Court and YOT staff may wrongly believe that such options have been tried and failed. In particular, a remand to local authority accommodation may be discounted as an option, resulting in premature use of secure remands and remands in custody.
- Is consideration given to potential differences between the assessments of looked after children and of other children with regard to the provision of bail supervision and support services, including bail with intensive supervision and surveillance and electronic monitoring?
- Is the child properly supported by a responsible adult?
- Is a history of running away or going missing misinterpreted as a history of absconding when in fact the child or young person might simply be seeking out a parent or other significant person? The term 'absconding' should only be used in relation to children remanded to local authority accommodation.
- Is there any indication that a looked after child has been inappropriately considered not to be vulnerable in the case of a custodial remand, perhaps in the light of an existing institutional care history?
- Where bail is refused, are all relevant people aware that a remand to local authority accommodation must be considered before any form of secure detention? Has a plan

⁸⁹ See www.barnardos.org.uk/get_involved/campaign/cutthemfree/aboutcutthemfree/spotthesigns for useful aids for practitioners.

been prepared and presented to support and supervise a remand to local authority accommodation to avoid a custodial remand, including bail with an intensive supervision and surveillance package?

- Where a child is remanded in custody or remanded to local authority accommodation, is a proper record kept of the duration of the remand period so that eligibility for leaving care services can be calculated?
- Where a child has been remanded in custody or given a court ordered secure remand, is a remand to local authority accommodation considered at subsequent hearings where bail (including bail with intensive supervision and surveillance) has been, or is likely to be, refused?
- Are there local differences in the way in which electronic monitoring is provided to looked after children?
- If being remanded to local authority accommodation means a placement change for a looked after child, how is their independent reviewing officer notified of this significant change?

Pre-sentence and other reports

- Do YOTs routinely review the way in which care histories are reported? Is full consideration given to the relevance of each reference to offending or rehabilitation?
- Is recorded behaviour perceived and reported in an inappropriate manner which could lead to it being seen as an aggravating factor, particularly in comparison with other children who have lived with parents without such records?
- Are failures or inadequacies in the care system properly taken into account by report authors assessing offending by a looked after child, in the same way as if a child were cared for by a birth parent?
- Do report authors inappropriately take account of recorded care histories and incidents as evidence of likely non-compliance?
- Would a looked after child be less likely to be considered for certain interventions (such as a youth rehabilitation order with a requirement of residence in local authority accommodation or fostering requirement) as an alternative to a custodial sentence?

Sentencing

- Is the child receiving proper personal support from the key adult person, and is there consistency in this support?
- Has any element of a care history been inappropriately perceived as an aggravating factor or as an indication of non-compliance with an intervention?
- Are looked after girls or young women perceived differently to their peers?

For checklists relating to custodial sentences, see appendix 6.

Chapter 7

Looked after children and custody

This chapter examines the particular problems that looked after children can face when remanded or sentenced to custody. One particular problem is that their status is not always properly identified and the right agencies are not always informed which means that they do not always receive the services they are entitled to. The chapter sets out the arrangements for professional support for looked after children in custody from children's services, independent reviewing officers and YOTs.

The nature of the problem

Looked after children in custody have more complex needs than their peers. A thematic inspection undertaken by HM Inspectorate of Prisons identified that young people who had been looked after were more likely to report problems on arrival, have substance misuse problems, and emotional and mental health problems.⁹⁰ In spite of these additional needs, half of those interviewed said they had not been visited by their social worker in custody or received financial support from their local authority. Without this, they reported feeling anxious about what was happening outside custody and, in relation to their resettlement plans, particularly anxious about where they would be living upon release or whether they would be able to get a job. Only a third of the young offender institutions involved said social workers regularly attended planning meetings, making it difficult to develop a coherent release plan.

This suggested little had changed since a study five years earlier of the experiences of looked after children during and after a custodial sentence which found that they did not always receive the statutory support they were entitled to.⁹¹ This lack of consistent support placed them at a practical disadvantage. Most lost their placement on entering custody which made release planning more difficult. It also had an emotional impact, with children reporting a sense of abandonment by their corporate parent. They needed an indication that they were valued, that professionals would 'fight their corner'. At follow-up, outcomes were poor overall and nearly a third of the children were either back in custody or facing new charges. Part of the problem was that social workers appeared unclear what their responsibilities were towards looked after children in custody. The usual care planning systems did not easily fit a situation where the local authority had not made the placement and had little control over what happened within it. Social workers from young offender institutions play a valuable role in bridging this gap.⁹²

Statutory responsibilities upon remand and sentencing to custody

Understanding care status for those entering custody

The care status of children in this position is complex. Some young people lose their looked after status on entering custody, others gain it and those subject to a care order or entitled

90 HM Inspectorate of Prisons (2011) *The Care of Looked After Children in Custody: A short thematic review* London: HM Inspectorate of Prisons

91 Hart D (2006) *Tell Them Not to Forget About Us: A guide to practice with looked after children in custody* London: National Children's Bureau

92 Fielder C, Hart D, Shaw C and Gibb J (2008) *An Evaluation of Social Work Posts in Young Offender Institutions* London: Youth Justice Board

to leaving care services remain the same. Appendix 1 summarises the existing position, with shaded areas denoting the fact that the child is looked after.

Explicit guidance on care planning for looked after children⁹³ and care leavers⁹⁴ in custody was included in the revised Children Act 1989 Guidance and Regulations implemented in April 2011. Guidance was also provided on the duty to visit those children who cease to be looked after when they go into custody.⁹⁵ It is important that agencies have a good understanding of the law and regulations, and refer directly to this guidance both when working with individual children and young people in these circumstances and when services are being planned. The following is a summary of the key elements of the guidance but is not intended to be comprehensive.

Assessment, care planning and review for children who remain looked after in custody

The local authority continues to be the corporate parent for children and young people who retain their looked after status whilst in custody. On placement, the local authority should provide the secure establishment with all the relevant information that they need to safeguard and promote the child's welfare. The child or young person should be visited within a week and then at least every six weeks for the first year, preferably by the existing social worker, and an assessment undertaken of their needs. Factors to consider when assessing welfare and safeguarding needs are as follows:

- Is there a risk of self-harm?
- Does the child or young person need money, clothes, books or other practical support?
- Are education staff aware of, and able to meet, the child or young person's educational needs, including any special needs or abilities?
- Are the health unit and wing staff aware of, and able to meet, their health needs?
- Are staff aware of, and able to meet, the child or young person's religious and cultural needs?
- Is the child or young person worried about anything? If so, what?
- What impact has the sentence had on family relationships? Does there need to be help with contact arrangements?
- What action is needed to provide for the child or young person's placement on release?
- Are changes needed to the care plan/pathway plan?

Some local authorities make the mistake of assuming that the custodial setting will be 'parenting' the child or young person whilst they are there and that they only need to become involved again when released. But this is not the case. The corporate parent has an important role in continuing

93 See also chapter 8 and annex 5 in Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 2: Care planning, placement and case review* London: Department for Education.

94 Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 3: Planning transitions to adulthood for care leavers* London: Department for Education pp.13-15

95 Department for Education (2010) *The Children Act 1989 Guidance and Regulations: Local authority responsibilities towards former looked after children in custody* London: Department for Education

to act as any reasonable parent would, including raising concerns with the establishment and the Youth Justice Board if they think the child is unsafe or not being properly cared for. Details of how to raise concerns are included in the Children Act 1989 Guidance and Regulations.⁹⁶

For any looked after child a custodial sentence will represent a significant change in arrangements for their care and there must always be at least one review of the care plan whilst a looked after child is in custody.⁹⁷ It is essential that the child or young person is clear as soon as possible but at least 10 days before they are due to leave custody what the plans are for their release, including where they will be living, what is expected of them and how they will be supported. Young people are particularly vulnerable in the early days after release. They are likely to be living in a new placement, facing the psychological challenge of being in an open setting and the emotional challenge of re-establishing relationships with family and friends. They will also be required to report to the YOT and take part in interventions to prevent further offending, which may include a curfew, perhaps electronically monitored. Social workers may underestimate how important their support is at that time, but for young people it is crucial. The local authority is likely to be responsible for caring for the young person long after the YOT has withdrawn and this commitment needs to be demonstrated, particularly if the young person is having difficulty in complying with the terms of their order. A significant number of young people are returned to custody for 'breach' and it is the duty of the corporate parent to try to prevent this.⁹⁸

Duty to visit young people who lose their care status in custody

Since April 2011, local authorities have had a new duty to visit those children who were looked after under s.20 of the Children Act 1989 or s.23(1) of the Children and Young Persons Act 1969 and who lose their care status on entering custody or during their time in custody.⁹⁹ Unless they were entitled to support as care leavers, it was previously possible for the local authority to close the case, effectively leaving those children and young people who did not have a supportive family without anyone to parent them. This must no longer happen: the local authority that was responsible for looking after them has a duty to visit them and assess their needs.

The person who visits the child or young person must be a qualified social worker employed by the authority, not a YOT worker,¹⁰⁰ and they will need to assess whether the child or young person will continue to require support as a 'child in need' whilst they are in custody as well as the plans for release. For some children, including unaccompanied asylum seekers, there may be no parental support and they will require ongoing help from the local authority throughout their time in custody, and to be accommodated again on release. Other families may be able to offer more support, reducing the need for local authority services. This assessment, informed by the views of the young person, family, independent reviewing officer and carers, should form the basis of a plan so that everyone involved knows what to expect. If anyone disagrees with the plan, they should have access to a dispute resolution process.

96 Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 2: Care planning, placement and case review* London: Department for Education

97 *ibid*, s.33(3)(d)

98 Hart D (2011) *Into the Breach: The enforcement of statutory orders in the youth justice system* London: Prison Reform Trust

99 Department for Education (2010) *The Children Act 1989 – Guidance and Regulations: Local authority responsibilities towards former looked after children in custody* London: Department for Education

100 *ibid* (p.4)

The role of the independent reviewing officer

If the child or young person becomes or continues to be looked after at the point of entry into custody, the independent reviewing officer must be informed and chair a review as they would in any other case where there has been a significant change in circumstances. The handbook for independent reviewing officers makes it clear that their role extends beyond the formal review meeting: they are expected to monitor cases in between.¹⁰¹ They will need to work out how they intend to do this with children and young people in custody, but good practice would be to visit them and to talk to them in private. As with the social worker, the independent reviewing officer must not assume that the only issue of importance is what will happen on release: the care plan should also make sure that the young person's needs are being met as far as possible whilst they are in custody.

For children who cease to be looked after in custody, the independent reviewing officer will not have a formal role in continuing to review the case, but they should be consulted by the social worker appointed to visit the child on how best to support them and whether they will need to be looked after again on release. If this is the case, the independent reviewing officer should be kept informed and resume their direct involvement at that point.

Leaving care

It is particularly important to establish whether children and young people in custody are legally entitled to leaving care services. The fact that a YOT's responsibility usually ends when young people reach the age of 18 and cases transfer to probation services where there is less awareness of these entitlements means that practitioners should understand how to identify care leavers and establish their right to services at an early stage (see appendix 3).

Good practice example¹⁰²

Darren was 15 and serving an 18-month detention and training order when first seen. He was to turn 16 before his release. He had been in voluntary care for a year prior to sentence because of conflict with his father and had been living in a children's home. He had been permanently excluded from school and was due to start at a pupil referral unit, but was sentenced before he could take up the place. In spite of the fact that he was not technically looked after while in custody, his local authority was continuing to plan for him as if he were and had agreed to resume care for him on his release, although no placement had been identified. The children's home and pupil referral unit also maintained contact with him. Darren had re-engaged with education in the secure setting and wanted to take GCSEs. The pupil referral unit was liaising with the establishment and sending in work for him. Darren's behaviour had been excellent throughout his sentence and it was planned that he would be released early and placed on an intensive supervision and surveillance programme.

At the follow-up interview, Darren was doing well. He had returned to his previous children's home and was supported by intensive supervision and surveillance staff, a YOT worker and social worker, all of whom he already had an established relationship with. Darren had found it difficult to adjust to being back in the community, feeling 'spaced out' and unable to sleep. But he had managed to overcome this and was engaged in the detailed programme of activities provided for him. Relationships with both parents and his girlfriend were positive, and he was

101 Department for Children, Schools and Families (2010) *IRO Handbook: Statutory guidance for independent reviewing officers and local authorities on their functions in relation to case management and review for looked after children* London: Department for Children, Schools and Families

102 Hart D (2009) *Managing Transitions from Secure Settings* London: National Children's Bureau

not finding it difficult to stay out of trouble. He felt this was partly due to being more settled and partly because he was 'growing out of it'.

A model of good practice

The Children Act 1989 Guidance and Regulations describes what the local authority should do when a looked after child is in custody, but it is good practice to also develop a culture that questions whether everything possible was done to prevent a looked after child going into custody. Relevant participants would include the social worker, the YOT, carers and the independent reviewing officer but the process should be led by a senior manager in children's services. The review should include consideration of the following:

- Whether the child or young person was offered the right support to recover from past trauma or abuse.
- Whether the care plan recognised factors that might lead to offending and put measures in place to tackle them, including positive activities.
- Whether the placement was able to manage any problematic behaviour without unnecessary criminalisation.
- The influence of peers.
- Whether the child or young person had positive relationships with professionals and carers and felt cared for.
- Whether they received skilled legal support.
- Whether the court received enough information about the child or young person's background and any mitigating factors.
- Whether a sound plan offering alternatives to remand/custody was put to the court.
- Whether the child or young person was accompanied in court by the corporate parent.
- For those who were in custody for breach of an order, whether they were given enough support to comply.

There are likely to be a plethora of agencies involved in the care of looked after children in custody. The challenge is to co-ordinate all the activity so that it fits together and everyone is clear who is doing what. The Children Act 1989 Guidance and Regulations contains a useful model for how this might look in practice¹⁰³ and checklists of good practice are provided in appendix 6 of this guide.

¹⁰³ Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 2: Care planning, placement and case review* London: Department for Education p.143

Chapter 8

Improving the quality of support to care leavers to prevent offending

Leaving care arrangements need to be carefully managed to ensure that looked after children who may be likely to offend receive sufficient support and assistance to minimise the prospect of this occurring. Uncertainty over future arrangements can cause a deterioration in behaviour, which may include offending.¹⁰⁴ Stability can be a protective factor against offending and it is important that this is part of the leaving care experience.

This chapter looks at the responsibilities of the local authority to care leavers, the requirement to undertake assessments and develop pathway plans, the importance of providing suitable accommodation and the role additional support can play in helping care leavers to live independent and law-abiding lives.

Leaving care responsibilities of the local authority

The arrangements for care leavers are set out in amendments to the Children Act 1989 by the Children (Leaving Care) Act 2000 and associated regulations and guidance.¹⁰⁵

YOTs, probation services, voluntary sector providers of services and the juvenile secure estate should become familiar with the Act's provisions and be able to routinely identify young people who are entitled to some form of support (see appendix 3). These entitlements (relating to accommodation, education, training and employment, mental health and financial support) are significant and are very relevant to the services needed by young people if they are to make a successful transition to the responsibilities of adulthood.

However, there will be young people who are either not aware of their entitlements or who have lost meaningful contact with the local authority. In such cases young people must be offered the assistance necessary to reinstate their entitlement to leaving care support.

Assessment of needs and pathway plans

For any child who is entitled to a leaving care service, the responsible local authority should carry out an assessment of needs and agree a pathway plan to determine what advice, assistance and support should be provided to meet those needs, both in preparation for leaving care and after the child or young person has left care. The pathway plan must take account of a comprehensive range of issues, including education, health and financial needs,¹⁰⁶ the involvement of all relevant persons (eg, education professionals) and it must be monitored by a personal adviser. The plan should contain scope for contingencies, should there be a need to alter any of the component parts because circumstances change. The arrangements to support the young person must be explicit.

104 Schofield G, Ward E, Biggart L, Scaife V, Dodsworth J, Larsson B, Haynes A and Stone N (2012) *Looked After Children and Offending: Reducing risk and promoting resilience* Norwich: University of East Anglia

105 Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 3: Planning transitions to adulthood for care leavers* London: Department for Education

106 *ibid*, p.26

Plans and interventions provided by or carried out within the youth justice system to prevent offending should be integrated with pathway plans. Sentence plans, supervision plans or youth offender contracts need to be taken into account in drawing up pathway plans with the young person. Continuing support and supervision provided by the YOT for bail and remand arrangements, a community order or a custodial sentence should also be taken into account. Care leavers in custody require particular support from the local authority (see chapter 7 for more on supporting young people in custody).

Suitable accommodation

All care leavers should be placed in ‘suitable accommodation’. This can help to promote stability and reduce their risk of offending.¹⁰⁷ Bed and breakfast accommodation is not considered to be suitable as there are often safeguarding concerns about this type of placement and the lack of structure it offers.¹⁰⁸ Looked after children must not move from a care placement to non-regulated accommodation without a statutory review of their care plan chaired by their independent reviewing officer.

Young people who have been involved in the criminal justice system and young care leavers often find it difficult to adjust to independent living and may need extra support to prevent placements breaking down.¹⁰⁹ Floating or tenancy support can provide this additional assistance, and good links with housing authorities can provide access to this.

If a care leaver in full-time residential higher or further education needs vacation accommodation, this must be provided by the local authority.¹¹⁰ Financial plans for accommodation maintenance and any extra support must also be made available as required.¹¹¹

Mentoring

Providing a child or young person with a mentor – a supportive adult prepared to work with him or her on a voluntary basis – is an effective way to help a young person prepare for their future.¹¹² Trusting and supportive relationships can enhance resilience and provide the encouragement to explore options, take up new opportunities, solve problems and build relationships. These factors can contribute to increased self-efficacy, self-esteem and resilience, enabling young people to cope better with success and failure.

For children and young people who have been in care, mentoring is often an important component of helping them to make the transition to independent living. For those involved in the criminal justice system it may contribute to the prevention of offending when combined with other interventions, although it is acknowledged that some forms of mentoring are more effective than others.¹¹³ However, it can help to promote social inclusion and thereby have an

107 Thomas S (2007) *Accommodation Source Document* London: Youth Justice Board

108 For definitions of suitable accommodation, see Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 2: Care planning, placement and case review* London: Department for Education.

109 Arnall E and Thomas S (2007) *Housing Needs and Experiences* London: Youth Justice Board

110 The Children Act 1989 requires that a local authority ensures that any care leaver in full-time residential education, further education or higher education, regardless of whether they are a former relevant child or a qualifying child, has suitable accommodation if they need it during a vacation. This is to ensure that care leavers are not made homeless out of term time.

111 Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 3: Planning transitions to adulthood for care leavers* London: Department for Education

112 Clayden J and Stein M (2005) *Mentoring Young People Leaving Care* York: Joseph Rowntree Foundation

113 Jolliffe D and Farrington D (2007) *A Rapid Evidence Assessment of the Impact of Mentoring on Reoffending: A summary* London: Home Office

indirect effect on reducing reoffending, in particular by supporting young people to engage with education, training and employment.¹¹⁴

Research by the Joseph Rowntree Foundation on the mentoring of young people leaving care found that young people who received mentoring support during the transition from care to independence wanted someone to talk to who would be there for them and who would support them in whatever way they felt they needed.¹¹⁵ When supported in this way, 95% of young care leavers achieved positive outcomes which included gaining employment and developing independent living skills, as well as improved confidence and the ability to sustain relationships. Young people who were mentored for over a year were more likely to achieve their original goals and to have plans for the future, and importantly the process assisted young care leavers to make normative transitions to independent living.

114 Newburn T and Shiner S (2006) 'Young people, mentoring and social inclusion' *Youth Justice* Vol 6 (1) pp.23-41

115 Clayden J and Stein M (2005) *Mentoring Young People Leaving Care* York: Joseph Rowntree Foundation

Appendix 1

Changes to care status as a result of criminal justice decisions

| Previous care status | Criminal justice decision | Effect on care status |
|---|--|--|
| Care order (s.31 Children Act 1989) | Police and Criminal Evidence Act 1984 detention ie, transferred from police detention to the care of the local authority pending appearance in court | No change – child continues to be looked after Responsible authority continues to have a duty for care planning and review in the same way as for all other looked after children |
| | Remand to local authority accommodation ie, remanded to a placement provided by the local authority | |
| | Court ordered secure remand ie, remanded to a secure children's home or secure training centre pending court hearing | |
| | Remand to custody ie, remanded to a young offender institution pending court hearing | |
| | Community penalty ie, convicted of offence but penalty served whilst resident in the community | |
| | Custodial sentence ie, convicted of offence and detained in secure establishment | |
| Voluntary accommodation (s.20 Children Act 1989) | Police and Criminal Evidence Act 1984 detention | No change – child continues to be looked after but under s.21 Children Act 1989 |
| | Remand to local authority accommodation | Responsible authority continues to have duty for care planning and review as above |
| | Court ordered secure remand | |
| | Remand to custody | Child ceases to be looked after during period of remand but responsible authority has duty to visit |
| | Community sentence | Child is looked after if in placement provided by local authority, including intensive fostering scheme |
| | Custodial sentence | Child ceases to be looked after during period in custody but responsible authority has duty to visit |
| Not currently looked after | Police and Criminal Evidence Act 1984 detention | Becomes looked after under s.21 Children Act 1989 and responsible authority acquires responsibility for care planning and review |
| | Remand to local authority accommodation | |
| | Court ordered secure remand | |
| | Community sentence: youth rehabilitation order with intensive fostering or local authority residence requirement | Looked after while in placement |
| | Remand to custody | Not looked after |
| | Custodial sentence | |

Shaded areas denote the fact that the child is looked after.

Appendix 2

Current bail and remand options

Unconditional bail

There is a general right to bail and it can only be refused on prescribed grounds. If granted unconditionally, the individual must simply return to court at an appointed date and time.

Conditional bail

The court may attach conditions to bail to meet certain statutory objectives, tailored to the individual case: to prevent offending, ensure attendance at the next court appearance, prevent interference with the course of justice and to ensure an individual is available for the preparation of reports for court. Conditions can include reporting requirements (to the police or YOT), avoidance of certain areas or people and curfews. They can be stand-alone or made in combination with bail supervision and support programmes or a remand to local authority accommodation.

YOTs have a statutory duty to provide bail supervision and support. There are two forms. The first involves a minimum number of contacts with the YOT each week. The second – bail with intensive supervision and surveillance – is more demanding and is accompanied by electronic tagging.

A residence condition can be attached to bail (on a looked after child or on a young person who is not living in suitable accommodation). The court, after consulting with the local authority, may direct the young person ‘to reside where directed by the local authority’ (or similar). Those aged under 16 may become looked after if the bail condition prevents them from living with a person who has parental responsibility for them.

Refusal of bail/remand to local authority accommodation

For those aged 10 to 16, when bail is denied the initial remand is to local authority accommodation. The court has powers to attach conditions or to impose requirements on the authority (eg, not to place the child with a parent). Those aged 17 are treated as adults and are remanded in custody. These arrangements will change when the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is fully implemented when 17 year olds will be included.

Remand in custody/court ordered secure remand/secure accommodation order

Where bail is refused, the court may deprive a young person of their liberty if strict criteria are met. In some cases this will be a remand to local authority accommodation with a requirement on the local authority to place the child in secure accommodation.¹¹⁶ Fifteen and 16-year old males whom the court deems vulnerable in prison and/or who cannot be placed in local authority accommodation (due to no availability) may be remanded in custody. Children aged 10 and 11 can only be placed in secure accommodation under the terms of s.25 of the Children Act 1989 and associated regulations. This requires the refusal of bail, which automatically results in a remand to local authority accommodation followed by an application from the local authority under the Children Act 1989 for a secure accommodation order.¹¹⁷

¹¹⁶ For all children aged 12 to 15, girls aged 16, and boys aged 15 and 16.

¹¹⁷ This is a reference to a secure accommodation order under s.25 Children Act 1989. For those remanded to local authority accommodation the youth court may make a secure accommodation order on the application of the authority. In practice, this provision is largely reserved for 10-12 year olds charged with grave offences, but a comparison between s.25 Children Act 1989 and the court ordered secure remand (for 12-16 year olds) suggests the child’s interests are better protected under s.25.

Appendix 3

Children and young people entitled to leaving care services¹¹⁸

Eligible children

An eligible child is one who is aged 16 or 17 and who, since reaching the age of 14, has been looked after by a local authority for a period of 13 weeks, or periods amounting to a total of 13 weeks. This must take into account periods of time during which a child or young person has been subject to a remand to local authority accommodation.

Relevant children

A relevant child is an eligible child who, at the age of 16 or 17, is not looked after. The reason for setting out both this category and the previous category lies in the differing duties and responsibilities relating to those who are still looked after and those who are no longer looked after. These are set out fully in the guidance and regulations referred to in footnote 118 below.

The Care Leavers (England) Regulations 2010 prescribes a further category of relevant children entitled to leaving care support as those who are detained (in a remand centre, young offender institution, secure training centre or any other centre pursuant to a court order) or in hospital at the point of reaching the age of 16, and who were looked after immediately before being detained or admitted to hospital (and had been looked after for a total of 13 weeks after reaching the age of 14). Thus, a young person who is looked after for the qualifying period, and is remanded or sentenced to custody or a hospital order and remains so upon reaching the age of 16, is deemed to be a relevant child.

Former relevant children

A former relevant child is one who has reached the age of 18 and was previously an eligible child. The duties and responsibilities of the local authority continue until the young person reaches the age of 21, or longer if they remain in education and training.

Young people qualifying for advice and assistance (qualifying children)

A qualifying child is defined in s.24 of the Children Act 1989 as a person who is aged at least 16 but is under 21 and with respect to whom a special guardianship order is in force (or was in force when they reached 18) and was looked after immediately before the making of that order, or at any time after reaching the age of 16 but while he or she was still a child was looked after, accommodated or fostered but no longer is.

The relevant local authority may provide 'qualifying children' with advice and assistance.

¹¹⁸ The information in this appendix has been extracted from Department for Education (2010) *The Children Act 1989 Guidance and Regulations – Volume 3: Planning transitions to adulthood for care leavers* London: Department for Education. See this resource for more detail on the definitions above.

Appendix 4

Strategic checklist for local authorities in relation to looked after children and offending

- Put in place a strategy agreed by senior officers and members responsible for corporate parenting that includes objectives to prevent or minimise offending by looked after children and align this to other relevant plans within the local authority.
- Identify and publicise clear objectives that relate to reducing offending by looked after children, identifying needs and problems, and linking to other indicators such as education and health.
- Appropriately prioritise prevention services for looked after children, including services to children in need who might become looked after, and make sure staff are aware of how to access these services.
- Liaise with housing services regarding provision for care leavers.
- Ensure there are effective mechanisms for consulting with and involving children and young people in the provision of feedback on looked after services and how they can be improved.
- Put protocols in place between children's services and YOTs for liaison at strategic and operational levels which provide information about the procedures, roles and responsibilities the respective agencies have towards young people who become looked after as a result of their offending behaviour and towards looked after children who offend.
- Check there are arrangements to facilitate the exchange of information between children's services and the YOT about looked after children in the home locality and when out of county placements are made, and ensure these arrangements are well known to the staff of both agencies.
- Create the expectation that staff from the YOT and children's services will attend and contribute to each other's planning meetings for looked after children in the youth justice system and monitor the extent to which this occurs within the local authority.
- Ensure there are arrangements for the prevention or minimisation of offending when out of authority placements are commissioned, and consider these arrangements alongside those provided for the education, health and well-being of children and young people.
- Ensure that looked after children placed beyond the local authority's borders receive the same level of support and services as all other children and young people, and embed this in practice.
- Provide joint (induction and refresher) training involving managers, social workers, YOT staff, independent reviewing officers, foster carers, children's home staff and others with an interest in the care of looked after children so all parties understand the actions that need to be taken and the responsibilities they must assume to prevent or minimise offending by looked after children.

- Ensure there are effective arrangements in place to meet the needs of looked after children and those who lose this status on entering custody, and there is adequate and skilled social work support.
- Present information about looked after children and offending at YOT management boards and ensure there is a representative of sufficient seniority from children's services on the board.
- Conduct periodic audits of case files of looked after children where children's services and the YOT have been involved in order to evaluate the service provided to them and whether it could be improved in any way.

Appendix 5

Checklists for those working with looked after children in the community

Checklist for YOT managers

- Ensure that YOT workers are familiar with local authority responsibilities for looked after children, particularly the significance of how children come to be looked after, as well as whether or not the local authority shares parental responsibility and how this applies in practice.
- Check that the records of YOTs concerning looked after children are accurate and up to date and compatible with information held by the local authority responsible for the child's care.
- Ensure proper liaison and joint working arrangements with children's services are in place and that these arrangements are periodically reviewed.
- Make sure that appropriate information is shared between YOT staff and social workers responsible for the care of looked after children.
- Check there are arrangements between the YOT and children's services for ensuring that an appropriate individual is allocated and available to offer support at every stage of the criminal justice system to looked after children who have been arrested and/or are being prosecuted.
- Ensure staff are aware of the necessity to inform a young person's independent reviewing officer of any significant changes in circumstances and of any other events they need to be notified of due to involvement in the criminal justice system.

Checklist for YOT practitioners

- At the start of any contact the YOT has with a young person, check with children's services to establish whether the young person is looked after.
- Ensure up-to-date information about the young person's care status is recorded on YOT case management systems.
- Incorporate children's services knowledge of a young person's care history and care plan into pre-sentence reports and other reports for court.
- Ensure that YOT assessments and intervention plans take information from care plans into consideration when addressing risk factors and promoting protective factors.
- Check when considering the reduction of offending by looked after children that other agencies meet their responsibilities to provide the child or young person with a sufficient and appropriate education.

- Share appropriate information with children's homes and with foster carers about looked after children the YOT is supervising.
- In order to promote joined-up working, ensure that YOT staff attend planning and statutory review meetings about individual looked after children and that children's services staff attend review meetings for sentence planning for looked after children.
- Establish an effective information flow so that YOT staff receive sufficient information about care planning meetings and can contribute effectively.
- Ensure there are always identified individuals to support looked after children at the different stages of the criminal justice system.
- Make sure arrangements for cases involving placements from another authority are well known, in particular those for liaison, communication and planning, as well as what action is required if offending occurs.
- Ensure the responsibility and accountability of every professional involved in each looked after child's case is clearly defined, including responsibility for keeping in touch with and supporting parents and carers.
- Know what information the independent reviewing officer should be informed of in relation to looked after children in the criminal justice system, and how they can be contacted.

Checklist for senior managers of looked after children's services

- Where children are identified as being at risk of offending or have offended, ensure that care plans include actions to prevent offending.
- Make appropriate arrangements for children and young people who are placed out of the area of the authority responsible for their care so that they are given the same level of service as young people placed in the home area.
- Ensure that where a looked after child is placed out of the area and is already being supervised by a YOT, social work staff are aware of the need to contact the YOT in the locality where the young person has been placed and to share information about them.
- Make sure that staff are aware of protocols and other inter-agency agreements to ensure there is information sharing, proper liaison and joint working with the YOT at all stages of the care planning process.
- Ensure that independent reviewing officers are aware of their responsibilities to looked after children and young people being supervised by the YOT in the community and to those in custody.
- Make sure an appropriate individual is allocated and available to offer support to looked after children who have been arrested and/or are being prosecuted.

Checklist for social workers

- Ensure that care plans recognise and reduce risk factors and promote protective factors that relate to offending.
- Make sure you are routinely informed of all significant events for looked after children on your caseload who are involved with the youth justice system.
- Incorporate fully in care planning arrangements any functions the YOT is fulfilling in relation to the looked after child.
- Ensure there is sufficient and appropriate educational provision for those looked after children without provision, given the significance of this particular risk factor in preventing offending.
- Ensure the skills of carers are well matched to children's needs and to the risk of offending when considering placement options.
- Make sure there are arrangements in place to enable social workers to routinely attend YOT sentence planning and review meetings and receive preparatory documentation.
- Ensure that YOT staff are routinely invited to care and pathway planning and review meetings, and sent preparatory documentation.
- Make sure that all looked after children who offend are provided with an identified individual to support them through the youth justice system.
- Know what course of action needs to be taken and which agencies need to be involved when a looked after child who offends is placed beyond the local authority's borders.
- Make sure there is provision on how to prevent offending and meet the needs of every looked after child placed beyond the local authority's borders.
- Know what the role of the independent reviewing officer is in relation to looked after children in the criminal justice system and of the need to keep them informed of any changes in circumstances.

Appendix 6

Checklists for those working with looked after children in custody

A checklist for social workers

- Identify what the establishment needs to know and provide that information to them as soon as possible, establishing who your key contacts will be.
- Alert anyone else who needs to be informed that the child or young person is in custody.
- Make sure the child or young person knows they have not been abandoned and send a message to them about when you will be visiting.
- Visit them within a week and assess their needs.
- Make sure that family and friends are able to visit and maintain contact with the child or young person.
- Make a plan to meet the emotional, practical and financial needs of the child or young person whilst they are in custody. (It should not be assumed that the establishment will do this.)
- Start working in partnership with the YOT to plan for release, including where the child or young person will live.
- Implement the parts of the plan you are responsible for and keep yourself informed about the tasks that others are doing.
- Organise reviews of the care plan and liaise regularly with the independent reviewing officer on its progress.
- Continue to visit the child or young person, make sure they know what is happening and deal with any concerns.
- Maintain contact with the YOT worker after the child or young person is released.
- Consider whether there was anything which would have kept the young person out of custody and which will prevent their return.

A checklist for YOT workers

- If the social worker was not in court, make sure they are informed that the child or young person is in custody and where they have been placed.
- Inform the custodial establishment of the child or young person's care status and the social worker's contact details.
- Contribute to the social worker's assessment and review of the care plan.

- Involve the social worker in the sentence planning process and make sure the two plans are compatible.
- Start working in partnership with the social worker to plan for release, including each person's respective roles and responsibilities in the community.
- Implement the parts of the plan you are responsible for and keep yourself informed about the tasks that others are doing.
- Continue to visit the child or young person, make sure they know what is happening and deal with any concerns.
- Maintain contact with the social worker after the child or young person has been released.
- Consider whether there was anything which would have kept the young person out of custody and which will prevent their return.

A checklist for local authority managers

- Create a culture of proactive corporate parenting for looked after children who enter custody.
- Ensure that the social worker gives the establishment within five days the information they need to safeguard the child or young person and promote their welfare.
- Ensure that a social worker visits the child or young person in custody within one week, that an assessment of needs is undertaken and that a suitable plan is made.
- Ensure that the care plan is reviewed within appropriate timescales.
- Check and approve the plans for looked after children, including those who have lost their status as looked after children, based on their needs whilst they are in custody and on release.
- Provide the necessary resources to address the needs of children and young people in these circumstances.
- Establish a multi-agency review process to identify what can be learned from the experiences of looked after children who have gone into custody, including an analysis of their profile and time in care.

A checklist for independent reviewing officers

- Chair a review of the care plan, making sure the process is suitable for the custodial setting and that the child and family can participate freely.
- Make sure the amended care plan will meet the child or young person's particular needs, both whilst in custody and on release, and that it is compatible with the sentence plan.
- Continue to ascertain the wishes and feelings of the child or young person so that these are taken into account in developing plans for their future.
- Sentence planning meetings and statutory reviews of care plans should be aligned, but a

distinction should be maintained between sentence planning and long-term care planning which needs to take into account the child's full range of needs.

- Establish a timescale for further reviews of the care plan, bearing in mind the need to have one before release.
- Monitor the implementation of the plan and the effectiveness of the services being provided.
- Contribute to any process to review lessons from looked after children who have gone into custody, and make the independent reviewing officer aware of any improvements needed to the service (the independent reviewing manager should also include these in their annual report).
- Consider whether there was anything which would have kept the young person out of custody and which will prevent their return.

A checklist for case supervisors in the secure estate

- Obtain information about the child or young person's needs, circumstances and plans from the social worker and pass it to the relevant people in the custodial establishment.
- Advise the social worker on how the custodial regime works, including arrangements for them to visit.
- Inform the social worker of relevant events concerning the child or young person within the establishment.
- Attend care plan review meetings if the child or young person consents, or ensure you receive relevant information from the meetings.
- Act as a link between the sentence and care planning process.
- Establish that the child or young person is receiving the planned services within the establishment.
- Provide opportunities for the child or young person to talk to you about any problems they are experiencing whilst in custody.

This essential guide examines some of the key issues in relation to looked after children and the prevention of offending.

Highlighting the principal legislative provisions relating to looked after children, it also addresses the main strategic and operational issues for youth offending teams and children's services arising from this area. It then considers key decision making points in the criminal justice system which can influence outcomes for looked after children and the importance of using diversionary approaches where appropriate.

Examining the particular problems that looked after children can face when remanded or sentenced to custody, the guide also sets out the arrangements for professional support from children's services, independent reviewing officers and youth offending teams before finally considering the importance of good leaving care services in preventing offending.

Equipped with useful checklists for practitioners, this guide to reducing offending by looked after children will be of interest to local authorities, youth offending teams and those working with looked after children in foster care and children's homes.