



The National Association for Youth Justice (NAYJ) is the only membership organisation which exclusively campaigns for the rights of and justice for children and young people in trouble with the law. **NAYJ** was formed in 1995 following the amalgamation of two existing organisations, the Association for Youth Justice and the National Intermediate Treatment Federation and in 2010 became a registered charity. We seek to promote the welfare of children and young people in the Youth Justice system in England by campaigning, lobbying, publishing practice and policy papers and providing training events and conferences.

General comments

The NAYJ welcomes this latest in a long line of efforts to raise the profile of the issue of the disproportionate representation in the youth justice system of children who have been subject to corporate parenting. There are some general comments that the NAYJ feel are relevant to the review before addressing the specific questions.

1. The NAYJ is concerned that the use of terminology should be exact and that this review covers all children in the 'care' system. The term 'children in care' has a specific legal definition meaning a child subject to a 'care order' be it a finite one (an interim care order) or one that runs until the age of majority (unless revoked by a subsequent court hearing). The NAYJ anticipates that the review will include those looked after under s20 Children Act 1989, children subject to remands to youth detention or open local authority accommodation, children subject to an Emergency Protection Order, children who are transferred to local authority accommodation under s38(6) Police and Criminal Evidence Act (1984) and those sentenced by a court to residence in local authority accommodation or a Youth Rehabilitation Order with a fostering requirement.
2. Research 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. It is well established that the risk factors that predict involvement in criminal activity are

similar to those that may predict looked after status.¹ A report produced for the Youth Justice Board on risk and protective factors for youth crime concludes that being looked after may not be a risk factor in its own right, although it is not clear whether additional risks derive from, or are inherent within, the fact of being looked after.² More specific research into offending and residential care identified that the care environment can present a set of risks for teenage boys that reinforces offending behaviour.³ 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 non-criminalise) 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. 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 from these difficulties more 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.

3. Whilst many looked after children make a positive and law-abiding transition to adulthood, and it is crucial the disproportionate representation of looked after children in the youth justice system does not lead to serious stereotyping, a disproportionate number experience poor outcomes in a wide variety of life chances in comparison to the general population.

Indicator ⁴	Looked after children	All children
Offence leading to a final warning or conviction	7.3%	3%
Educational achievement (5+ GCSEsA*-C)	12%	55%
Permanently excluded from school	0.6%	0.1%
Special educational needs	73%	56%
Unemployed in the September after leaving school	17.5%	3.7%
NEET at 19	30%	7.3%
Mental health problems	45%	10%

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 Anderson B, Beinart S, Farrington D, Longman J, Sturgis P and Utting D (2005) *Risk and Protective Factors Associated with Youth Crime and Effective Interventions to Prevent It* London: Youth Justice Board

³ 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

⁴ This chart has been reproduced from 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 and updated with data from www.education.gov.uk.

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 with 21.4% in residential care. 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. There may be a variety of reasons for this discrepancy, but are likely to include:

- An older age profile of the residential population
- That placement in a children's home may be an indication of being harder to place – which may be associated with more problematic behaviour
- Youth offending is frequently a peer phenomenon and may be more likely where children live in groups
- Placements in children's homes are more likely to be emergency / short term and a lack of stability is likely to be associated with increased offending
- Staff are less likely to be trained / qualified than foster carers
- An issue that NAYJ believes is particularly important – the increased dependence on private provision and lack of in house residential capacity, means that local authorities are reliant on the vagaries of the private sector market. This inevitably means that residential children's homes are frequently at some distance from the local authority and clustered in areas where property is cheaper. This in turn leads to placement at considerable distance from the child's community – despite a presumption of placement within authority, the proportion of placements outside has increased in the recent period. Such placements disrupt schooling and a lack of education increases the risk of offending. Children placed away from home are also more likely to go missing and more likely as a consequence to have contact with the police.

4. Looked after children come into contact with the youth justice system at a higher rate than the general population. However there are a number caveats that need to be made on the measure of the rate of over-representation of looked after children.
 - a) Children have to be looked after for more than 12 months to qualify as eligible to be counted. This means children who are looked after for less than this period will not be included.
 - b) Care must be taken not to create the impression that looked after children are on a 'revolving door' pathway moving from the looked after system to the youth justice system, or custody, and vice versa.
 - c) Offending rates for the wider population are based on police force areas not local authority areas, which the figures for looked after children are. Also police figures are drawn over the calendar years (January to December) whereas local authority figures are drawn from financial years (April to March).
 - d) Police figures are drawn from offence in their geographical area whereas local authority figures are drawn from children in their own looked after system, including those placed 'out of area'.
5. A study 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.⁵ 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. However care needs to be taken in interpreting this figure as there was no indication at what age the individual experienced being looked after.

Response to specific Questions

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

It has long been established that those children who are in care are more likely to become involved in offending behaviour than their relevant counterparts in the general population. For example, 5.6 per cent of looked after children aged 10 to 17 had been convicted or subject to a final warning or reprimand during the year ending 31 March 2014. This is higher than the 2014 national figure for all children at 1.2 per cent (Department for Education, 2014: 18). Despite recent successes in youth justice such as the dramatic fall in the number of first time entrants (see MoJ/YJB, 2015) and the reduction in the use of custody, looked after children are vastly over-represented in the Youth Justice System (YJS). For instance, less than 1% of all children in England are in care, but looked after children make up 33% of boys and 61% of girls in custody (Prison Reform Trust, 2014: 45).

Rather than dealing with problematic behaviour as 'criminal' it should be normalised. Children who engage in disruptive behaviour including those with care status should be dealt with via a problem solving and child-centred approach as opposed to a punishment-led one that is currently used by the legal system. Rather than responding with punitive responses perhaps tolerance and relational support could be targeted towards children within the care system. Children with care status are reportedly marginalised within society and over-represented within low educational attainment and the criminal youth system. They have usually experienced a range of challenges, rejections and traumatic experiences (internal challenges) that may often contribute/manifest in the presentation of challenging behaviours externally and these external behaviours are the ones which are observed and punished by society.

Problematic behaviour should be dealt with proportionately, and in the same way as other children would be dealt with within a non-LAC scenario ie within the 'family home'. It should be children first (where vulnerabilities and needs take precedence over the crime and criminality), where children are fully aware of their rights and entitlements. Over representation/ disproportionality should be addressed by understanding that contact with the system is harmful and can result in unnecessary escalation of behaviours. Equally, problematizing current discourses regarding LAC and reviewing the current system of support/availability of staff who act as parents could be focused upon.

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

The care system contains some of the most vulnerable children in England and Wales. There are significant issues that are a feature of it that increase the chance that a child or young person will offend, these include but are not limited to:

1. The inappropriate use of the police as a behaviour management agency The NAYJ

⁵ HM Inspectorate of Prisons/Youth Justice Board (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

believes this may be due to either the lack of training and support that staff receive to manage children who are vulnerable, or because there is a requirement that the care home need a crime number for insurance purposes. Incidents that we are aware of having been prosecuted include, a 14 year old boy being prosecuted for criminal damage for kicking a door and a 12 year old girl being prosecuted for criminal damage for smashing a plate. Such problematic behaviour should be dealt with proportionately, and in the same way as other children would be dealt with within a non-LAC scenario i.e. within the 'family home'.

2. Residential care homes can have a high staff turnover. Staff often lack training, experience and support. Care staff may not have experienced supporting a child in trouble with the YJS, this means that they are unaware of procedures and protocols, particularly in relation to appearing in court. There have been incidents witnessed by members of NAYJ where care home staff do not appear with the child at court to support them we know of cases where staff have transported the child but then remained in the waiting area or in the car whilst the hearing takes place. One particular incident for example occurred in a youth court where a vulnerable 14 year old girl, 'Lucy' (see attached case study) was appearing for the first time for several charges of criminal damage all related to the care home, she was brought to court by two care staff from the home who were dressed in shorts/flip-flops and were subsequently unable to accompany her into the court room because they were inappropriately dressed. This left the child unsupported in what is often an intimidating situation. There is a clear need for better liaison between the Youth Offending Service (YOS) and care homes to enable staff to understand what is needed to support children in court.
3. Children in care who commit offences in their placement may have to return to the 'scene of the crime' or alternatively may find themselves moved to a new placement as a response to their behaviour. They may either struggle to 'move on' from the incident because of constant reminders, or conversely, do not have to deal with any consequences of their actions. feel that misbehaviour is often dealt with by movement to a new placement Because of the delays that can occur between arrest and prosecution/appearance at court, restorative processes may have already been instituted in the placement; for example between a care worker who has been assaulted and a child. The child may view the incident as being resolved and the court appearance and any subsequent order can result in these reconciled relationships being fractured and broken again.
4. Children in care are often subjected to greater surveillance than their non-care counterparts and are more likely than others to come to the attention of the YJS They are reliant on care staff to enable them to access YOT and other services particularly those who are placed away from conurbations. The NAYJ is aware of young people being refused bus fare or staff refusing to transport them to appointments. This puts young people in care at a disadvantage to their non-care counterparts because they are at greater risk of breach due to being over-reliant on care staff for support to engage with YOT services.
5. Recent scandals regarding the failure of services to appropriately monitor care homes and protect children from things such as sexual exploitation (see Jay, 2014) and other risks. Children in care who participated in research by Morris (2015) reported that being in custody made them feel safe. For instance, one 15 year old looked-after girl who was serving a 9 month Detention and Training order for robbery reported that being in custody was 'the best thing' as it meant she was safe. She reported that she did not want to come out of custody as she would not know what was happening from day to day. It is a sad reflection that someone feels safer in custody than they do in community.

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

Pre-Care

The extent of post care offending is likely to be a function of the level of pre-care disadvantage, neglect, trauma etc. (The fact that looked after children will almost inevitably have had more difficult experiences than the general population is one of the problems about the data which compares the care population with the general population rather than similarly disadvantaged children in care and not in care). It follows that as thresholds for care change - as they do – the likelihood of post care offending will also shift: in other words, if thresholds for care rise, then the resulting care population are likely to have had more difficult pre-care experiences and more likely to engage in offending behaviour post care. Conversely the quality and availability of pre-care services to children and families may mitigate some of the pre-care experiences and have a positive impact on post care offending – as well as preventing unnecessary care episodes.

The placing of a child is crucial if positive outcomes are to be achieved for a child in the care of the state. If a child is placed far away from a familiar area then it can have a detrimental effect on their well-being. Under the Children Act 1989 local authorities are required to do what is 'reasonably practicable' to place young people in their home area. Distancing a child from family links, peer groups, schools and neighbourhoods can undermine the protective effects of these important relationships.. Children are not always consulted about placement changes, the NAYJ is aware of a 13 year old girl moved from her care placement due to a deterioration of her behaviour, but did not know where she was going until the night before she was due to move. This made her incredibly anxious and frustrated resulting in her behaviour worsening during the days leading up to her move. It is contradictory to responsiblize (Phoenix and Kelly, 2013) young people for their behaviour through processes such as restorative justice/criminal proceedings in one respect yet to not involve them in such important discussions over where they will be living/moving too.

Post-Care

Whilst there are difficulties at the front end of the care system as children are taken into care there are also difficulties in relation to children who leave care. There has been recent criticism of local authorities (Burns, 2015; Richardson, 2015) for failing to provide support for those young people leaving care with increased pressure being placed on the Government to keep children in care until the age of 25 (see Anne Longfield, Children's Commissioner for England). It is becoming increasingly of concern that those young people who leave care have not been equipped with the skills needed for independence such as managing money. This is exacerbated when leaving care is also leaving custody, custodial staff are not always aware of the rights and entitlements of children who have been in care and children can get 'lost' in the system.

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

No comment

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

** The term 'youth justice system' is intended to mean the law, policy and practice relating to the*

treatment of children and young people by the police, youth offending teams, courts, secure children's homes, secure training centres and young offender institutions.

There is now increasing evidence of the importance of appropriate and supportive adult relationships in impacting on offending behaviour.

The YJS works with some of our most vulnerable and challenging children. Often practitioners invest a great deal emotionally with the children that they work with, going above and beyond particularly when it comes to working with looked-after children. For example, one practitioner interviewed in Morris (2015) reported that she was going to visit a vulnerable looked-after 14 year old boy who was on her case load at 8am in the morning (she did not officially start work until 9am) at the care home in resided in because once the care home unlocked the doors at 9am he would disappear for the day and often not return (he was regularly reported as missing). YOT practitioners often saw themselves and the services that they offered as being the saving grace for children in care for whom they felt many other agencies prior to the child entering the YJS had let down (Morris, 2015).

Intriguingly for some children, being on a YOT order was the only way they perceived that they could get help. For example, James (age 14) who had been in care for 2 years reported that being on a Youth Rehabilitation Order was the only way he would get help in relation to his anger management (at age 14 he had amassed 8 convictions already, all of which were related to either criminal damage to the care home and/or assaults on staff) and made statements at his sentencing hearing for his eighth common assault conviction that he wanted a longer order than was first considered (6 months instead of 3) because he wanted the help that he felt the YOT offered him. He was given a longer order than was actually necessary with little consideration being given by the court or the YOT practitioners as to the detrimental effects the ongoing association and reliance on the YOT could have on his future chances.

The consequences of offending and/or reoffending for looked-after children can be severe; they can lose their placement. Often looked-after children are treated on the basis of good and bad behaviour with good behaviour rewarded and bad behaviour punished. This can be more extreme than would be normally the case for non-looked-after children with children in care for example having already limited opportunities for socialisation with their peers restricted and even more instance chances to interact with their families restricted because of their poor behaviour. For example, Lucy (the attached case study) was consistently told by the care home that she would not be able to see her mother unless she behaved; to place such a condition on a child is cruel and unfair.

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

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

It is difficult to separate what elements of the youth justice system have an unfair impact on children and young people with experience of care from the elements of the care system which have an unfair impact; often they go in tandem. However some specific examples of where the YJS has an unfair impact on children with experience of care include:

1. Children in care can often be left unsupported at key stages of the YJS such as in the police station, at court and at certain types of YOT appointments where parental input would usually be necessary. This can be due to the care home being under-staffed; lack of staff with experience/knowledge of the YJS; difficulties over who has responsibility for such attendance e.g. should it be the residential care home staff or the child's social worker? Additionally, the care worker involved may be the 'victim' of the offence, or a prosecution witness or representing the agency which made the complaint to the police.

1. Procedures in relation to remand can have an unfair impact on children who are in care particularly if their care placement has broken down and an alternative cannot be found quickly enough to offer a strong alternative to custody. Where a child has been refused bail, the default position should be a remand to non-secure local authority accommodation. This may mean that for looked after children – from the court perspective – there is no practical difference between granting bail or refusing it – with the possibility that this might increase the prospect for the care population of a remand to youth detention accommodation.
2. For those children in care who are sentenced to custody, being released can be a particularly difficult time as there is no guarantee that the place that they held in a care home prior to their incarceration is still available. Meaning that what is already a challenging time in terms of uncertainty and change is made more stressful by the fact a child might not know where they are going to be living upon release (this is of course not just restricted to looked-after children but the impact arguably can be more acute). For instance, HM Inspectorate of Prisons (2011:43) in a short thematic review looking at looked-after children in custody reported that young people who said that they had been in care were more likely to report that they would have problems on release than those who said they had not spent time in care. It was particularly noted that they were more likely to say that they would have a problem finding accommodation, getting a job, continuing health services and avoiding bad relationships than their non-care counterparts (HMIP, 2011: 43). What is even more disturbing is that half of the children (approximately 63) interviewed reported that they did not know who would be collecting them on the day of their release (HMIP, 2011). The ‘not knowing’ can be detrimental to the notion that being release from custody should be a ‘fresh start’.
3. NAYJ remains concerned about the overrepresentation of BME children in both the care and youth justice population leading to a risk of these children being doubly disadvantaged.
4. The traumatic pre care histories of children in the care system leads to a greater potential for their involvement in criminality at an earlier age. The low age of criminal responsibility in England and Wales can be seen as impacting disproportionately on children in the care system.
5. NAYJ remains concerned that there is no ‘quality assurance’ of solicitors representing children in the youth court. In 2012, the Centre for Social Justice recommended that advocates operating in the youth court should be ‘ticketed’ to ensure they had the requisite skills and knowledge.⁶ This, together with the recent changes in the legal aid system mean that children in the care system can be doubly disadvantaged by the lack of non- specialist representation in court.

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

There is a strong relationship between care and education. Children in care are more likely to experience exclusion from school. This means that often children in care are educated at the care home in which they reside. Subsequently they spend increasing time in an environment which can put them at greater risk of offending; keeping children in care in school or finding alternative means of educating them which are outside of the care

⁶ 2012 ‘Rules of Engagement’ Centre for Social Justice. London

home is important to reducing the risk of a young person offending. For example, in the attached case study, Lucy (aged 13) was excluded from school on the grounds that she had assaulted a PCSO on school property. The exclusion put her at greater risk of offending due to her staying in the care home for long periods of time. She is considered to be academically talented and saw being excluded from school as pure punishment for altercation which happened on the fringes of the school grounds. Due to frustrations with spending all of her time in the care home, Lucy began to 'lash out' resulting in all of her subsequent convictions (8) occurring in the care home. Being educated in a care home where for example the education is delivered via a computerised system means that the options available to looked-after children are limited. They often are only able to study the core subjects such as English and Maths, which whilst important do not necessarily provide students with the academic choice or opportunity to stretch themselves.

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

There should be greater joined-up working between Children's Social Care, Youth Offending Teams and the Police in order to reduce/avoid the criminalisation where possible of looked-after children. The South East protocol is an example of best practice in this (see below).

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

1. Some of the barriers include attitudinal, logistical and financial. With regard to attitudinal staff may be resistant to change due to ingrained, long-held beliefs. With regard to logistical, in order to change the way an organisation works what is required is a culture shift, and training needs must be addressed. Staff may be resistant to such new ways of working. Some of the proposals put forward by us in this paper require financial investment which may not be possible due to the current economic climate and government cuts to provision. However, in the long term such investment will save taxpayers money as looked after children's mental health and wellbeing will improve.
2. A further structural barrier is the impact of the increasing use of private providers of children's homes and the subsequent placements often great distances from the child's home area.

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

No further comment.

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

1. The South East protocol for reducing criminalisation of children in care is an example of good practice. It is a piece of work that has been signed off by 10 of the relevant Local Authorities and 4 police forces. The principles have been agreed across agencies and provide a good platform for reducing criminalisation. This is the regional protocol that complements local agreements which outline the operational arrangements between agencies at a local level.
2. Manchester Youth Offending Service (YOS) started to monitor their looked-after

children who were appearing at court as part of a review of their services. They created a scheme where they had a single point of contact meaning that 2-3 YOS practitioners from each locality had responsibility for a specific care home; for instance YOS staff attended staff meetings in the care home. This helped to create a system whereby there was fluid exchange of information between the YOS and the care home. The YOS also sought to proactively roll out the use of restorative justice in care homes in Manchester who have the highest police call out rates; this was to help resolve minor incidents before the police had to be called out. They have particularly worked with night-support staff in the care homes recognising that it is often those workers who face the most challenges in relation to the young people in their care.

Both of these examples were features in a session on the 'Over-Representation of Looked-After Children' at the Youth Justice Board Convention in 2013.

8(c) Is there anything else you would like to say to the review team?

Attached is a case study from Morris (2015) which illustrates many of the issues raised in this submission and shows the effect that they can have on a young person's life.

Case Study: 'Lucy'

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