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Experiences and pathways of children in care in the youth justice system

Dr Anne-Marie Day

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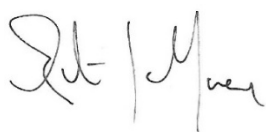
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Foreword

HM Inspectorate of Probation is committed to reviewing, developing and promoting the evidence base for high-quality probation and youth offending services. *Academic Insights* are aimed at all those with an interest in the evidence base. We commission leading academics to present their views on specific topics, assisting with informed debate and aiding understanding of what helps and what hinders probation and youth offending services.

This report was kindly produced by Dr Anne-Marie Day, setting out a range of barriers and enablers to supporting children in care, impacting upon their positive development and life chances. The barriers include the institutional, controlling, stigmatising and criminalising elements of residential care, placement instability, and escalated youth justice responses. Based upon research findings, some potential solutions and recommendations are set out, including 'on street' support, keeping children within local authority boundaries, fully utilising liaison and diversion opportunities, monitoring any disproportionality in youth justice responses, increased informal contact for children in custody, and securing suitable and appropriate accommodation pre-release. More generally, the importance of listening to children in a meaningful way is emphasised, at both the individual level and in relation to overall strategic approaches. As set out in our inspection standards for youth offending services, we will continue to examine the attention given to the views of children at both of these levels.



Dr Robin Moore
Head of Research

Author profile

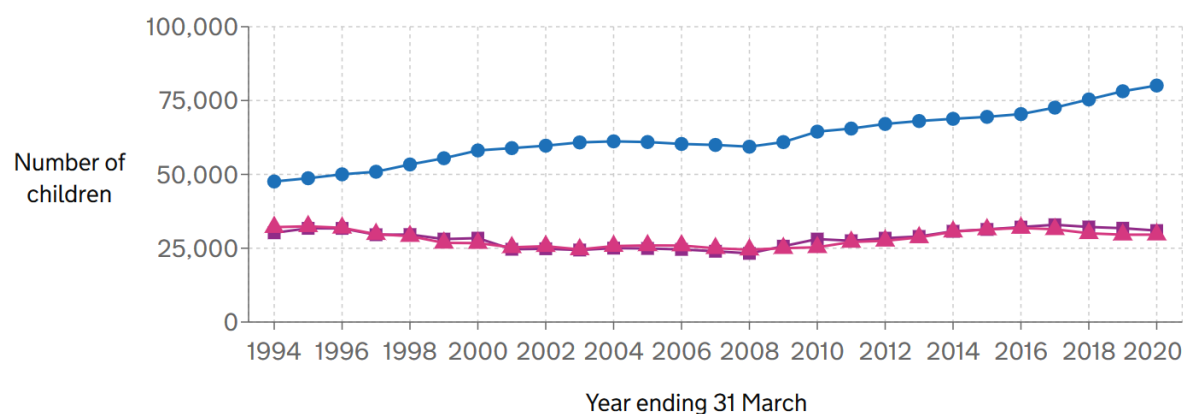
Dr Anne-Marie Day is a Criminology Lecturer at Keele University. Her PhD considered the pathways into offending for children in care, and she has recently completed a research study funded by the Nuffield Foundation on the pathways into and out of custody for children in care. Anne-Marie has taught a range of criminology and criminal justice modules in a number of different higher education institutions. She also has many years' experience as a practitioner and policy maker in a range of criminal justice roles. She is a qualified Probation Officer, and has worked in the community, courts and prison. Anne-Marie has also worked as a youth justice manager and for the Youth Justice Board as a Senior Policy Adviser in the areas of Prevent, Looked After Children, Domestic Abuse and Anti-Social Behaviour. Currently, Anne-Marie is a board member on the Alliance for Youth Justice and is an expert adviser to the Howard League for Penal Reform, the Youth Justice Board, Cheshire youth justice service, and the Home Office on various youth justice issues.

The views expressed in this publication do not necessarily reflect the policy position of HM Inspectorate of Probation.

1. Introduction

On 31 March 2020, there were 80,080 children in care in England and Wales (Department for Education, 2020), reflecting an increase of 26 per cent since 2008 (Department for Education, 2011). It is estimated that between 37 per cent (HM Inspectorate of Prisons, 2016) and 50 per cent (Prison Reform Trust, 2016) of children in custody have been in care at some point in their lives. Considering children subject to youth justice supervision who are looked after and placed away from home, a joint inspection found that 98 per cent of its sample lived in private children’s homes or independently; nearly one-third had been placed outside of their home area on three or more occasions; 63 per cent were living more than 50 miles from their home; and 24 per cent more than 100 miles (HM Inspectorate of Probation, 2012: 6). The disproportionate representation of care-experienced children in the youth justice system therefore remains a significant and persistent challenge to academics and policy makers. However, despite the upward trend of numbers of care-experienced children, and persistent high levels of disproportionality in the youth justice system, neither the Department for Education nor Ministry of Justice have conducted a review into this disproportionality.

Children looked after at 31 March, children starting to be looked after during the year and children ceasing to be looked after during the year, in England, 1994 to 2020



- Number (Children looked after at 31 March, England)
- Number (Children starting to be looked after during the year, England)
- ▲ Number (Children ceasing to be looked after during the year, England)

(Source: [Department for England statistics](#))

This Academic Insights paper focuses upon elements of the care and youth justice systems over which policy makers and practitioners have control. Barriers and enablers to supporting children in care are identified, all of which can impact upon their positive development and future life chances.

2. Barriers and enablers to supporting children in care

2.1 Impeding positive development

There are a number of features of the care and youth justice systems that can impact upon a child's positive development and lead to further criminalisation. We will now consider each of these in turn.

Placement instability

There is much evidence linking placement instability with challenging behaviours in care (Schofield et al., 2007; Price et al., 2008; Ryan and Yang, 2005). The literature highlights that care-experienced children have very little input into their placement, leading to feelings of powerlessness and frustration (Day, 2019; Wigley et al., 2011):

Eric: And I remember when I first went into care five years ago, and they said "Yeah, you're gonna be here three months." Three months have gone. They say, "Another three months." Then after six months they said, "Er it's another three months", and you get moved to somewhere else for a further six months, and it's like I don't fucking know (Day, 2019: 133).

Care-experienced children reported positive care experiences where they were given choice and control over their care journeys (Selwyn, 2015). Placement instability has also been found to have a negative impact on children's attachments to friends, family, caregivers and professionals (Bollinger 2017). This highlights the importance of children being able to form positive relationships with carers and professionals whilst also allowing children to maintain, where appropriate, close links with family and friends from their 'home' area (Selwyn, 2015; Wigley et al., 2011). It also suggests that placement instability can impact on a child's identity formation, challenging their sense of self and place in the world (Colbridge et al., 2017; Ward, 2011). Moreover, when children experience multiple transitions, they are at an increased likelihood of engaging in self-destructive behaviours, including delinquent behaviour (Ibid., 2011). Care-experienced children are particularly at risk of serious harm or child sexual exploitation where they are not able to form appropriate and meaningful relationships with professionals and caregivers (Winter, 2015).

The challenge of residential care

The majority of care-experienced children were living in residential homes when convicted of their first offences or their offending increased in frequency or seriousness (Day, 2019; HM Inspectorate of Probation, 2012). There have also been studies which document that offending behaviour is more likely to take place in residential care than other forms of care (Taylor, 2003). Other concerns such as child sexual exploitation and children going missing from residential care have led to both academics and policy makers focusing on how to improve the quality of service provision for children in residential care. Other challenges faced by residential care is that it is frequently viewed as the provision of 'last resort', which is common across many European and English-speaking nations (Courtney and Twanec, 2009). Its use as a 'last resort' means that the most troubled and vulnerable children are often placed in residential care. Studies show that placing children together can mutually reinforce behaviours, including offending behaviour (Polsky, 1962; Millham, Bullock and

Cherret, 1975). Therefore, how to reduce reoffending within residential care has become a specific focus of research and policy concern in the last 30 years.

The stigma of being in residential care

There is a stigma attached to being in residential care as a placement of last resort that the children are aware of. In my own research with care-experienced children, they displayed an awareness that, if placed in residential care, they are a 'bad kid' and have been 'put to one side':

Mark: Cos it's just....it's like....it's like you've been put away. I don't want to make it sound more tragic than it is, but it's kind of like you've been put somewhere. You're in with the bad kids now....I was one of those kids that thought I'm never gonna grow up to be like that, and then you know, the story changes a little bit (Day, 2019: 127).

The discussion of being put to 'one side' is important as when one is placed to 'one side' it generally means that there is nothing that can be done to help. Mark therefore suggested that being in residential care means, for him, that the system has given up on helping him, and that he is now a lost cause – a 'bad kid'. This appears to have impacted upon his 'story' and ultimately his sense of self, as he appears to accept the 'bad kid' label with a sense of sadness.

The tension between care and control

All children need care. However, a strong theme to emerge in the academic literature related to the tension for care staff between caring for children and controlling them. More generally, the complex and difficult task facing care staff is recognised in numerous studies. Berridge and Brodie (1998) note that the difficulty of this task commences as soon as the children arrive at the home. They found that staff are poorly informed about a child's background and experiences prior to arrival due to scant information being provided in case files. Where a child was placed 'very often boils down to whoever has an empty bed' (Berridge and Brodie, 1998: 131).

Given that residential care is viewed as a placement of last resort, one of the consequences is that children's homes are dealing with a smaller, but much more complex group of children. Behavioural control was found by Berridge and Brodie (1998: 99) to be a 'major preoccupation' for all the homes they visited. Where control problems emerged, it related to the children's desire to leave the building, rather than direct conflict with staff. It has been argued that staff feel torn between caring for the child as a 'parent' or carer, and the need to fulfil the role of a professional, distancing themselves from the child (McLean et al., 2015). The main tension appeared to be between control and connection; with staff stating that maintaining the overall control of the home often had to take priority over connecting with an individual child. The prioritisation of control over care appeared to impact on how children perceived their carers in residential care homes:

Interviewer: OK. So why were you assaulting the staff?

Mark: I dunno, like I would never assault the foster carers cos they were actual, I dunno, I don't want to sound rude or anything but....

Interviewer: No, but you're viewing them differently to the foster carers

Mark: Foster carers are like, to me, [this is going to sound really bad but] they're actual people. To me they're actual people. Like they're actual mums and dads.

Interviewer: You've got respect for them?

Mark: Mmmhmm. But in care homes, you don't see them with their family so you don't recognize them as family (Day, 2019: 139).

Despite the apparent tension that exists, the literature concludes that care should take priority over the professional expectations of a role, and that it is possible to deliver good quality care to complex and challenging groups of children in residential homes (Kahan, 1994; Berridge, 1998). The key to the quality of the care is for the children to achieve consistent and trusting relationships with carers (Kendrick, 2008).

Institutional features of residential care

A strong theme to emerge in the literature relates to the prevalence of institutional features in residential care. Features such as large numbers of staff cars, a battered front door, locked internal doors, asking permission to get food from the kitchen, the existence of an office, and many rigid rules all reminded care-experienced children that they were not at home, and in an institution, causing them to feel different and stigmatised as a 'looked after child' (Berridge and Brodie, 1998; Day, 2019; Department for Education, 2015). The many rules, having to ask permission to move around the home, and lack of freedom all acted as reminders to care-experienced children that they are not 'normal', thus challenging their own sense of self, often leading to frustration:

Jack: It feels like....it feels like, it's everything that matches a home, it's got nice walls, paintings, rooms are nice, carpet, it's not scruffy or anything. But it's just like in a home it's more open, you can do your own thing. You have to always ask here, but at home you can do your own thing, you just do it yourself. But in a care home you can't really do your own thing, you have to ask a staff member to do this, or go in there, you've got your own arms and legs, why can't you do it yourself? (Day, 2019: 119)

Residential care as a criminalising environment

Given the above challenges facing care-experienced children, it can be argued that the residential care environment itself is criminalising (Hayden, 2010; Kilpatrick et al., 2008; McLean, 2015; Shalev, 2010; Shaw, 2014; Taylor et al., 2014). Specific elements of the home have been highlighted that criminalise children including the high rates of police call outs to deal with children going missing from their care placement (Hayden, 2010), often leading to confrontations with the police when they attempt to return children to the placement. Shalev (2010) found that once missing, the children were most likely to commit an offence of violence (linked to their heightened emotional state) or theft (as a survival offence). Moreover, children reported spending all their time on the streets and adopting a 'street lifestyle' with their friends and associates, rather than spending time in the care environment. The adoption of this lifestyle often involved forms of 'survival' behaviour such as fighting or robbery to maintain status, but this brought them into contact with criminal justice authorities (Day, Bateman and Pitts, 2020). Children also continued to report being criminalised for minor behaviours in the residential home that would not lead to a police callout in the family home:

Jason: I got kicked out for throwing yoghurt at one of the members of staff. That's how daft it is. I got done for assault (Day, 2019: 122).

The mix of children within a home was also found to be problematic, leading to increased conflict, and potential police call outs (Taylor et al., 2014). Linked to this, peer pressure within residential homes has been found to contribute to offending (Shaw, 2012). Kilpatrick et al. (2008) also found that upon entering a residential home, a hierarchy often exists, in which some children will want to assert their power and dominance over the group, in an attempt to avoid being a victim of bullying (Kilpatrick et al., 2008: 35).

Ultimately, children want their voices to be heard, and for them to be interacted with as individuals, rather than according to labels:

*Interviewer: Then you've been removed from that, into ***** of all places and ended up committing different kinds of offences. Why do you think that is?*

Scott: Cos people don't listen, that's why. They need to learn to listen.

Interviewer: What were you trying to tell them?

Scott: Erm, I was just like you need to listen. Those who do not hear will feel. If you do not hear what I'm gonna say to you, you're gonna feel what I'm gonna say. Listen. (Day, 2019: 150)

Up-tariffing through the youth justice system

Once within the youth justice system, care-experienced children can be subjected to a relatively rapid escalation in responses. Recent research found that care-experienced children tended to be assessed as a higher risk of reoffending than their non-care peers, and had longer criminal records containing many 'minor' offences linked to their care placement at the point of entering custody (Day, Bateman and Pitts, 2020). Breach rates for post-custody supervision were also higher for care-experienced children, reducing the prospects of successful resettlement. Non-compliance was in some cases associated with unstable or unsuitable accommodation and the intensity of contact required by youth justice services (Ibid., 2020).

Surviving custody

The treatment of children in custody, particularly young offender institutions (YOIs) and secure training centres (STCs), has troubled practitioners and policy makers for several decades, causing many to question whether the current system should be abolished (Willow, 2015). Indeed, in 2017, the Chief Inspector of Prisons stated that he did not believe that any YOI or STC could be deemed safe enough to hold children (HM Inspectorate of Prisons, 2017). Academic research has highlighted the 'pains' of child incarceration (Gooch, 2015) including high levels of segregation, bullying, and restraint. Recent research also found that children in care felt particularly isolated because of a lack of familial support, confirming a perception that being 'looked-after' set them apart from other children (Day, Bateman and Pitts, 2020). They adopted a distinct strategy for surviving custody, fighting to maintain status and avoid victimisation, rather than keeping their head down. This preference, a reflection of a survivor identity, led to increased restraint and segregation (Ibid., 2020).

Release from custody often presented as an opportunity for children with family support, but was challenging for most, particularly care-experienced children, who were lacking the

required support to successfully resettle into the community and move away from offending (Day, Bateman and Pitts, 2020). Resumption of a 'street lifestyle' was common, with care-experienced children being concerned with where they would live, thus preventing them from considering their longer term plans required to enable a 'constructive resettlement' (Youth Justice Board, 2018).

2.2 Supporting positive development – what can be done?

A fairly bleak picture has been outlined for care-experienced children who have come into conflict with criminal justice agencies. However, research also offers some potential solutions and recommendations.

'On street' support

It is recommended that local agencies consider how best to support children who adopt a street lifestyle, ensuring they have access to constructive activities and are re-engaged in education or training. The development of a detached youth provision might form an important element of such a strategy. Reducing the number of looked-after children who go missing, and drift towards the street, is an urgent necessity (Day, Bateman and Pitts, 2020).

Keep children within local authority boundaries

Children's services must meet the statutory duty to secure sufficient and appropriate accommodation for children in care within the local authority area wherever possible, developing additional 'in house' residential children's homes as required. Where placements out of area are unavoidable, the provision of enhanced local support to ensure constructive daytime and evening activities that meet children's wishes and interests, and to maintain links with professionals, family and friends from their home community will help to reduce the risk that children go missing, or migrate to the street (Day, Bateman and Pitts, 2020).

Increased informal contact for children in custody

We propose that to address the perceived isolation of care-experienced children in custody, professionals prioritise 'informal' contact, including regular visiting, not linked to statutory planning processes, in order to demonstrate what children see as a level of genuine care.

Good practice example

South and West Yorkshire Resettlement Consortium funded a link worker in Wetherby YOI, and professionals considered that the presence of this worker in the custodial setting made it easier to maintain meaningful relationships with children on their caseload. Local authorities with a custodial establishment in their area should accordingly consider establishing similar link worker posts (Day, Bateman and Pitts, 2020).

Securing suitable and appropriate accommodation pre-release from custody

Good practice example

While difficulties with identifying stable accommodation remained, the existence of a local protocol across the South and West Yorkshire area, agreed by Directors of Children's Services, requiring that a suitable address was identified at least two weeks prior to release, had had a positive impact. It is recommended that other local authorities adopt a similar protocol. Children in care should be involved, from an early point in their sentence, in discussions about where they will live so that they feel assured that suitable accommodation will be found, perceptions of the need for self-reliance are alleviated, and the potential for a focus on longer-term planning and the development of future aspirations is enhanced (Day, Bateman and Pitts, 2020).

Monitoring breaches and assessments of children in youth justice services

It is proposed that youth offending teams monitor breach to determine whether care-experienced children are disproportionately subject to proceedings for non-compliance. Consideration should be given to a presumption against breach for children in care. AssetPlus and other youth justice assessments of children should be monitored to ensure that higher levels of need do not necessarily equate to higher levels of risk of reoffending. The 'care information' page should be given much more attention, reflecting a detailed understanding of a child's care experiences by youth justice practitioners.

Fully utilising all liaison and diversion opportunities for care-experienced children

Good practice example

The child (M) was referred to the Cheshire Diversion Service by the police, following an offence of public order and criminal damage committed within the residential care home at which the child had been temporarily resident. As part of the assessment process, the Divert Team were made aware of the extensive involvement of children's social care as a result of neglect from her birth parents. There were concerns for the girl's welfare and safety because she hadn't settled in her residential placement and was frequently missing. She was believed to be at considerable risk of sexual exploitation and a Deprivation of Liberty (DoL) order had been granted which meant staff were trying to keep her in for her own safety. The damage she caused to the home was believed to be her way of expressing to professionals that she wasn't happy at the placement and did not want her liberty deprived to the extent that she wasn't allowed to leave the home without supervision.

Following the completion of a divert assessment and extensive liaison with agencies supporting M, it was agreed between the youth justice service and police that an out-of-court disposal would not be issued to the young person. She had fully engaged with the divert assessment process and it was pleasing to note there had been a notable period of desistance from when the offence had been committed, but it was also clear that there was already in place a comprehensive support package in place delivered by children's social care, Young Addaction (substance misuse service) and Moving Up Care staff, which was helping M to regulate her behaviour.

Although no disposal was issued, the Divert Team liaised with the Children and Adolescent Mental Health Service (CAMHS) to ensure that M was offered ongoing support. As a result of this support, the young person settled into a new accommodation placement, accessed local

educational provision, there were no incidents of being missing from home, and M reported building strong relationships with care staff. The DoL order has now also been removed and M was really pleased with the 'no further action' outcome from the police because she was fearful of any formal record coming back to haunt her in the future.

Development of a local protocol with the aim of reducing the criminalisation of care-experienced children

Good practice example

In Cheshire, the local criminal justice board, prompted by both research findings and instances of inappropriate outcomes for children in care, locally galvanised a task and finish group of all the main partners. The group focused on addressing the issue of children in care appearing in court for offences which would not have had the same outcome had it been in a family home. The courts were fully supportive of the initiative which led to a written protocol being agreed in summer 2021. Cheshire are now taking a 3D approach: Discretion – Delay – Divert. This enables attending police officers at an incident to consider the wider implications of child first and trauma-informed approaches rather than a procedural response.

The group was chaired by a Director of one of the four local authority children's services and the protocol agrees clear pathways to avoid the use of the criminal justice system wherever possible for children in care – an approach that Cheshire police are extending for all children. The support of senior leaders within the criminal justice and children's social care arenas was paramount to the success of the protocol which has yielded results prior to its official adoption.

The protocol includes guidance for frontline police officers and Crown Prosecution lawyers, as well as commitment to providing alternative outcomes alongside youth justice services, residential providers and children's social care.

Listen to children in a meaningful way and respond

It is proposed that meaningful listening is on two levels:

- 1) individual children must be given the opportunity to speak with a trusted adult (that they choose) about their care plan. This should then, where appropriate, be acted upon
- 2) more widely, it is recommended that youth justice teams develop a user group of care-experienced children to consult with and discuss key operational and strategic decisions and future directions of the service.

3. Conclusion

There are many challenges facing the care and youth justice systems to reduce the criminalisation of children. Given the multiple models of youth justice delivery across England and Wales (Gray and Smith, 2019), it is difficult to develop a monolithic footprint of how to meet this challenge.

However, by seeking to focus on systemic failures, it is hoped that this paper will provide at least some tangible and clear insights, ideas and recommendations for reform. The recommendations highlight the importance of constructive activities; positive, consistent and trusting professionals; family and friends; 'informal' contact; and the need to meaningfully involve and listen to the children themselves.

Would I accept what the care system offers for my own children? Absolutely not.

If my daughter was placed with a family that she had never met, in an area that she did not know, sent to a school that she had not attended before, expected to 'fit in' to a family that was not her own, would I accept this? If my daughter then struggled to cope, and started running away to try and be with her own friends, where she feels accepted and has a clear sense of her own place in the world, would I call the police and force her to return to the 'home' that she was told that she must reside? If, as a result of this, she started to display challenging behaviour, would I move her to another place, to go through the whole traumatising process above, again?

Would this be repeated on many, many occasions, with ultimately my daughter being labelled a criminal, a runaway, difficult to engage, untrustworthy of those in authority, angry, violent, having mental health problems etc etc?

I can honestly say, absolutely and definitely not. As a parent I would fight hard, with all of my physical, emotional and mental strength to protect my daughter from this. I would offer her a place of safety, warmth, that she felt in control of and happy with, near to her family and friends, so that she could continue with her life and feel as little disruption as possible.

If she misbehaved or struggled to cope and ran away, she would not be labelled as problematic or punished. Instead, she would receive wraparound support, love, care and warmth, and the opportunity to speak about whatever was worrying/bothering/concerning her.

This is the job of a parent. And we should expect no less from the corporate parent.

(Taken from Howard League Blog 'Why are we still failing children in care?' (Day, 2018))

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Her Majesty's Inspectorate of Probation
1st Floor Civil Justice Centre
1 Bridge Street West
Manchester
M3 3FX

The HM Inspectorate of Probation Research Team can be contacted via HMIProbationResearch@hmiprobation.gov.uk