

## **Looked after children and custody: a brief review of the relationship between care status and child incarceration and the implications for service provision**

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### **Introduction**

Although there are some important limitations with the data, the available evidence demonstrates conclusively that children who are in the care of the local authority are consistently over-represented among those who come to the attention of the youth justice system. A similar disproportionality is also evident within the children's custodial estate. While it appears that the relationship is long-standing, it has only recently become the focus of policy attention which has begun to explore some of the reasons for the patterns discernible in the figures (see, for example, Schofield et al, 2012; Laming, 2016). In particular, an independent review of the relationship between the care system and the criminal justice system, led by Lord Laming, commissioned an extensive exploration of the available literature that provides a useful baseline for future research (Staines, 2016).

The current review aims to provide a context for research, funded by the Nuffield Foundation, that aims to identify the particular pathways of looked after children into, through and leaving custody and to establish in what ways, and to what extent, these might differ from those of children who do not have care experience. It does not accordingly aim to replicate the earlier work identified in the previous paragraph; instead the intention is to draw on previous reviews, and relevant additional material, through a lens that focuses on the existing evidence base as it relates specifically to the likelihood of children being incarcerated, to their subsequent custodial experience and to the provision of effective resettlement once they have been released.

### **Context: divergent trends**

The relationship between the care and youth justice systems is inevitably a complex one that is determined, at least in part, by the exogenous factors that influence the functioning of each system. Although the behaviour, and social and familial, circumstances, of individual children will impact on the chances of coming into care or being criminalised (or both), other systemic factors are at least as important (see for instance, Rowlands and Statham, 2009; Bateman, 2017). As a consequence, while care and the youth justice interventions might both be understood as responses to particular forms of childhood difficulties, in

recent years, such factors have led to divergent trends in the number of children looked after by the local authority and the number who receive a formal youth justice disposal: the former has risen steadily, while the latter has shown a dramatic decline.

### **A rise in the care population**

The number of children looked after in England rose from 59,400 in the year ending March 2008, to 72,670 in the year ending March 2017, an increase of just over 22 percent and higher than at any point since 1985 (Department for Education, 2010; 2017). Only a very small part of this pattern can be attributed to demographic change since the growth in the general childhood population over this period has been a much more modest three percent (Office for National Statistics, 2017). Accordingly, the rate of children in care per 10,000 of the general under 18 population has also risen from 54 in 2008 to 62 in 2017 (Department for Education, 2010; 2017).

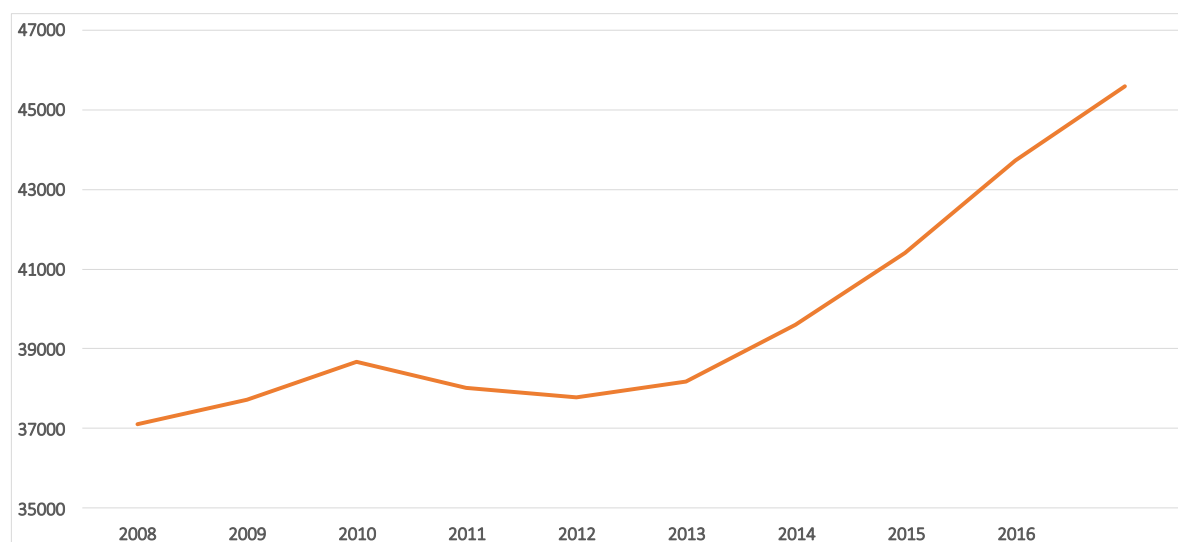
A range of different explanations for the rising trend have been offered. Detailed analysis has shown an upward shift in the proportion of looked after children who are subject to care orders under section 31 of the Children Act 1989 (as opposed to being accommodated on a voluntary basis under section 20 of the same legislation) (Statham et al, 2009). It has been suggested that this reflects the impact of highly visible cases, such as the death of Peter Connelly, in which children's services were criticised for failing to intervene earlier, leading to an increased sensitivity among practitioners and the wider public to potential child protection concerns. Consequential shifts in practice have, on this account, tended towards a lowering of thresholds for care proceedings (Macleod et al, 2010). Care orders are also associated with care episodes of longer duration so that there would be a rise in the number of children who are in care at any point in time – the care population - even if the total number of children acquiring looked after status each year was to remain static (Statham et al, 2009).

It has also been proposed that the growing population might reflect an expansion in the prevalence of the sorts of social problems and familial difficulties that might lead local authorities to determine that children were sufficiently at risk to meet the threshold for entry to care. The Association for the Directors of Children's Services (2017), for instance, has recently pointed out that the rise in the number of children in care is part of a broader increase in the demand for children's services that includes a five per cent growth in those assessed as being in need and a ten percent jump in the number of children subject to a child protection plan. The Association argues that this picture is largely explained by increased inequality, itself a consequence of austerity and reduced resources available to local authorities (Local Government Association, 2017; Bywaters et al, 2016).

From the current perspective, however, it is also important to consider the age distribution of the care population since younger children, below the age of criminal responsibility (ten years in England and Wales) are not liable to formal youth justice interventions. If the increase in the numbers of children looked after was particularly concentrated among this younger group that would be a factor relevant in considering the relationship between care and criminalisation. In the event, the growth in the care population has been broadly similar

across the age ranges: as shown in figure 1, the number of children in care within the 10-17 age bracket rose from 37,100 in 2008 to 45,580 in 2017, an increase broadly in line with that for the whole of the care population. Accordingly, children aged 10 years or over have consistently accounted for 62 per cent of all those in care over that period.

**Figure 1:**  
**The number of children aged 10-17 years inclusive looked after in England: 2008-2017**  
(Derived from DfE, 2012a; 2017)



Boys in care outnumber girls, with the latter accounting for 44 per cent of looked after children (DfE, 2017). Nonetheless, the representation of girls in the care system is considerably greater than that in the youth justice system, where they make up a much smaller, and diminishing, proportion of the total population.

A further issue of significance is that Black, Asian and minority ethnic children (BAME) are over-represented among those in care. As indicated in table 1, in 2017, almost a quarter of looked after children (24 per cent) were of BAME origin compared with around 16 per cent of the general under18 population. The most significant disproportionality relates to black and mixed heritage children; Asian children are slightly underrepresented among those with looked after status (DfE, 2017). As will be outlined below, BAME over-representation is equally an issue for the youth justice system.

**Table 1: Children in care population in England by ethnicity: March 2017**  
(Derived from DfE, 2017)

<b>Ethnicity</b>	<b>Percentage of total care population</b>
White	75%
Mixed heritage	9%
Asian / Asian British	5%
Black / Black British	7%
Other ethnic groups	3%
Total BAME	24%

### **A contracting youth justice population**

By contrast with the care system, the most notable feature of the youth justice system in recent years has been its rapid contraction: the number of children receiving a formal youth justice disposal – either pre-court or following conviction – has declined every year since 2008 (Bateman, 2017). According to Youth Justice Board data (Youth Justice Board/ Ministry of Justice 2018), the number of ‘proven offences’ against children fell from 295,129 in 2007 to 72,985 in the year ending March 2017, a reduction of 74 per cent.

This dramatic contraction stands in need of explanation since one might have anticipated that the social and economic factors which have underpinned the rise in the use of local authority care might also have had an inflationary impact on children’s offending behaviour. It is generally accepted that the main driver of the fall in youth justice throughput is a decline in the number of children entering the system for the first time – so called first time entrants (FTEs) who account for around a quarter of all children receiving a youth justice disposal (Bateman, 2017). Between March 2007 and March 2017, the number of FTEs declined by 85 per cent; a fall even steeper than that in the overall youth justice population. The onset of this trend coincided with the introduction of a government target to reduce the number of FTEs by 20 per cent by the year 2020 in 2008 (Home Office, 2008). The target was met within 12 months of its adoption but the level of FTEs continues to be an indicator by which the performance of the youth justice system is measured. Although there is also evidence that the level of offending by children had been falling for some years prior to the FTE target, it would appear that the marked shrinkage in the number of children subject to a formal disposal is a consequence of changes in practice triggered by a shift in government policy (Bateman, 2017).

Girls in the youth justice are a small minority, accounting for only 17 per cent of substantive disposals during 2017 (Youth Justice Board/ Ministry of Justice, 2018). Moreover, it is apparent that the contraction in youth justice outcomes has been significantly more pronounced for girls: in 2009/10 for instance, females accounted for one quarter of youth justice disposals (Bateman, 2017).

The youth justice system is also characterised by ethnic over-representation, which is currently at a similar level to that in the care system. As shown in table 2, 25 per cent of children receiving a formal criminal justice disposal, in the year ending March 2017, were of

BAME origin (Youth Justice Board/ Ministry of Justice, 2018). However, while ethnic disproportionality has been a long standing issue in the youth justice system, this level of overrepresentation has only been reached recently: in the year ending March 2009, for instance, the equivalent figure was just 14 per cent (Youth Justice Board/ Ministry of Justice, 2011). This rise is explained by a faster fall in criminal sanctioning of white children, indicating that the contraction in the youth justice system benefited this group to a greater extent than their minority ethnic peers.

**Table 2: Children receiving a formal youth justice disposal by ethnicity, England and Wales: year ending March 2017**

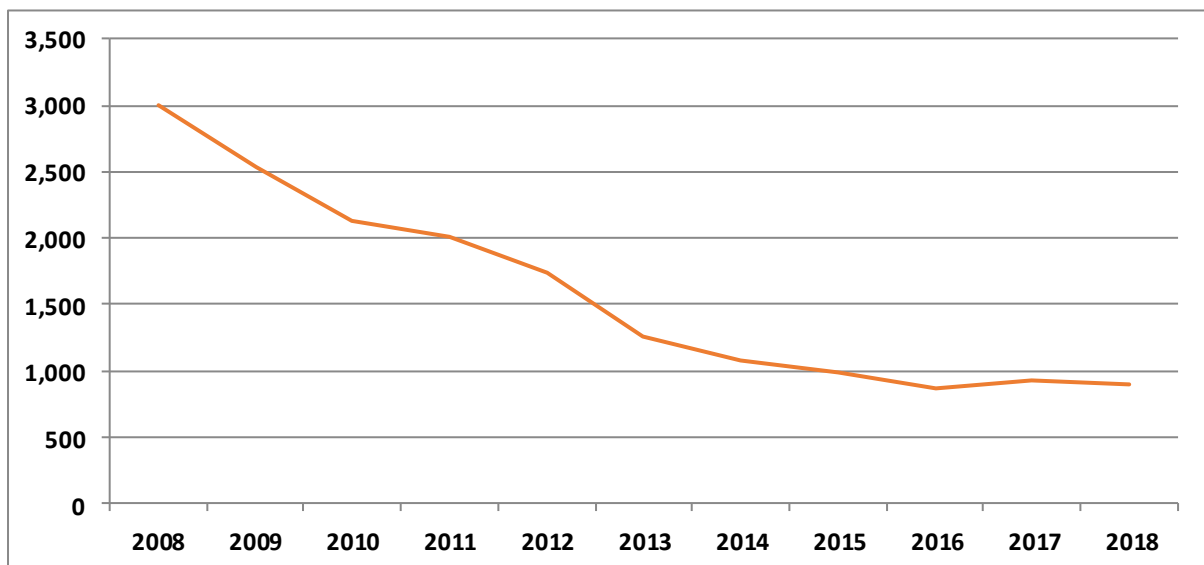
(Derived from Youth Justice Board/ Ministry of Justice, 2018)

<b>Ethnicity</b>	<b>Percentage of all disposals</b>
White	75%
Mixed heritage	7%
Asian / Asian British	5%
Black / Black British	11%
Other ethnic groups	2%
Total BAME	25%

From the perspective of the current review, it is important to note that the overall decline in the number of children coming to the attention of the youth justice system has been matched by a similarly stark reduction in the use of imprisonment for children, generating a corresponding slimming-down in the population of the secure estate for children, albeit that there has been a small increase over the most recent year (Youth Justice Board, 2018). As shown in figure 2, the number of children in custody at a particular time has fallen from 3,006 in May 2008 to 894 in May 2018, a reduction of just over 70 per cent. This latter outcome is not wholly unexpected given research findings that the level of custody for children is to a considerable extent a function of court throughput (Bateman, 2012). This decline has however been associated with a concerning rise in the proportion of the imprisoned population who are of BAME origin: while in May 2005, minority ethnic children accounted for one quarter of those in custody, by the same month in 2007, that proportion had risen to 45 per cent (Bateman, 2017). At the same time, data suggest that the treatment of children detained has, as the population has fallen, worsened considerably. In the year ending March 2017, the level of physical restraints, periods of isolation from peers and episodes of self harm were all significantly higher, relative to the numbers of children in custody, than in 2013 (Youth Justice Board / Ministry of Justice, 2018).

**Figure 2:**

**The population of the secure estate for children, England and Wales: 2008 to 2018 (May)**  
(Derived from Youth Justice Board, 2018)



In line with broader youth justice trends, the number of girls in custody has fallen more rapidly than the number of boys. As at May 2018, there were just 26 girls detained in the children's secure estate (Youth Justice Board, 2018).

### **Comparing children in care with children who offend**

It should be apparent that direct comparison between the care and justice data is not straightforward. The former are indicative of the care *population* (how many children are looked after on a given date); whereas the latter provides a picture of *throughput* (how many children are cautioned or convicted over a 12 month period).<sup>1</sup> Moreover, the large majority of children captured by the former dataset will have contact with the care system over a period of time; conversely, inclusion in the youth justice data is determined by the imposition of a disposal at a particular point in time, and while some children will have an ongoing involvement with criminal justice agencies, many – such as those in receipt of a caution – may not have any further interaction with the youth justice system.

Nonetheless, it is clear that coming into care and coming to the attention of criminal justice agencies might both be considered indicators of vulnerability. Sixty one per cent of children with looked after status in March 2017 were assessed as being victims of abuse or neglect at the time of coming into care; 15 per cent came from families deemed to be in 'acute distress' and seven per cent had experienced 'absent parenting' (DfE, 2017). Perhaps

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<sup>1</sup> The Department for Education figures do provide 'throughput' figures in the form of reporting on the numbers of children who were looked after at any point during the year, but these figures are again not directly comparable to the youth justice data since the latter, but not the former, record episodes rather than the number of children

unsurprisingly, it has been estimated that nearly half of children in care have a diagnosable mental health issue and two thirds special educational needs (Oakley, 2018).

Longitudinal research has confirmed that being in care as a child is associated with adverse adult socioeconomic, educational, legal, and health outcomes that are in excess of that associated with childhood or adult disadvantage per se (Viner and Taylor, 2005). Children with a care history are, for instance, more likely to be unemployed as adults or in low paid employment (Bywaters et al, 2016); a quarter of homeless adults were in care at some point during their childhood years (DfE, 2015b). Adult self-harm is also four to five times as great for those with a history of care than for the general population (DfE, 2015b). Children frequently leave care without the necessary skills to live independently and may accordingly be more vulnerable to various forms of exploitation: on one estimate, up to half of adult women engaged in sex work have, at some point been in care as a child (Child Exploitation and Online Protection Centre, 2011).

A note of caution might be sounded here since such findings tend to conflate a wide range of pre-care experiences, age of, and reason for, entry into care, length of time looked after and the nature of the placement experience (Forrester, 2017). Moreover, given the nature of many of the studies, it is not possible to compare outcomes against those which might have occurred had the children remained in the family home (Forrester, 2017). There is evidence, that for many children, the care experience is a positive one that improves their wellbeing (Forrester, 2008; Stein, 2005). In one sense, therefore, coming into care might, under some circumstances, be regarded as a protective factor. Recent research has also suggested that continuity of care (being looked after for more than six months in this case) was associated with lower rates of offending (Hayden and Graves, 2018).

While there is considerable evidence that lawbreaking is widespread among teenagers, and might legitimately be seen as a part of normal development, the characteristics of children who come to the attention of the youth justice system differ significantly from those of their peers. As Yates (2010) has argued, the youth justice population is:

*‘disproportionately drawn from working class backgrounds with biographies replete with examples of vulnerability’.*

Those involved in persistent and serious offending are the most vulnerable, being significantly more likely to have experienced family poverty, neighbourhood deprivation, school exclusion and to have been a victim of violence and to have self harmed (McAra, 2018). Indeed, it has been suggested that children in trouble might equally be understood (and treated) as children in need (Goldson, 2001). Indicators of vulnerability are perhaps predictably more pronounced among the incarcerated population: almost one third of boys and almost two thirds of girls admitted to custody between 2014 and 2016 were assessed as presenting concerns in relation to suicide or self-harm. Mental health concerns were noted for one third of boys and 41 per cent of girls (Youth Justice Board, 2017). While there is limited research on the impact of childhood contact with the justice system on all later adult life outcomes, it is clear that acquiring a conviction as a child significantly increases the chances of later offending, and limits university and career prospects in later life (House of Commons Justice Committee, 2017).

It is evident from the data presented above that, notwithstanding the evidence that children in the care and justice systems share histories of disadvantage, deprivation, victimisation and vulnerability, the dynamics of the two systems operate independently of each other. This is evidenced, for instance, by the recent sharply divergent trends in the justice and the care systems. This relative independence suggests that the interplay between care and crime is a complex one and that explanations of the relationship between the two will need to be finely nuanced.

## Dual status: in care and in trouble

The majority of children who are in public care do not come to the attention of the youth justice system. Indeed in recent years, the number of looked after children who receive a caution or conviction has fallen as the number of youth justice disposals has declined from 2,400 in 2010 to 1,160 in 2017 (DfE, 2010; 2017). Given that the care population has grown considerably over that period, it follows that the proportion of children in care who receive a criminal disposal has reduced more sharply than the absolute numbers suggest.

Nonetheless, the over-representation of looked after children in the justice system continues to be evident in the data (Laming, 2016). Moreover, the decline in criminalisation for children in care has been less pronounced than that for the 10-17 population as a whole, so that there has been a rise in the gap between the proportions of looked after children who receive a youth justice outcome and children who are not in care, as shown in table 3. On the basis of outcome data published by the Department for Education (2017) for England, it would appear that in 2016 children in care were around five times more likely to be criminalised than other young people in the relevant age range, compared to 2.6 times as likely in 2010.

**Table 3: Rates of detected offending by care status in England: percentage of children subject to a caution or conviction – selected years**  
(Derived from DfE, 2010; 2012b; 2015a; 2017)

Year	Percentage of children receiving a caution or conviction	
	Looked after children aged 10 – 17 years	All children aged 10-17 years
2010	7.9	3
2012	6.9	1.5
2014	5.6	3.3
2015	5	1
2016	5	1

The differential between the two groups shown in the table is, moreover, likely to be an underestimate since the figures for the care population relate to children who have been looked after continuously for 12 months or more. Given that more than half (54 percent) of



those children who become looked after remain in care for less than a year (DfE, 2017), it seems probable that a considerable amount of offending by children in care is not captured in the data. A survey of local authorities conducted by the Laming review, which included children in care for shorter periods did indeed find a slightly higher level of youth justice involvement (Laming, 2016). Further evidence in this regard comes from considering the relationship the other way around: almost half of young men under the age of 21 years in the criminal justice system (49 per cent) have experience of the care system (Berman and Dar, 2013). It should be noted however that the data are not directly comparable since the latter study captures children with any care history rather than those in care at the point at which they receive a caution or conviction. Moreover, that care experience will in some cases have been of a short duration.

While the overrepresentation of looked after children in the justice system is indicative of a correlation between care, offending and criminalisation, the relationship is far from being automatic; nor is it straightforward. The first point to note is that the evidence cited above relates to detected offending which results in a formal youth justice sanction rather than the much broader of category of behaviour which contravenes the criminal law (Bateman, 2017). As indicated later in the review, the distinction is an important one when considering how the disproportionality evident in the data might be explained. Secondly, as noted above, the majority of looked after children do not come to the attention of the youth justice system, and the proportion of such children who do has fallen sharply in recent years, indicating that care is not routinely predictive of crime. Moreover, it is clear that in some cases, coming into care can be associated with desistance from offending. A 2008 study of 248 children with care experience, aged 10 – 17 years, found that the large majority (70 per cent) had not received a criminal justice sanction either before acquiring looked after status or after admission to care; ten per cent with no prior criminal history, offended only after coming into care. Of the 20 per cent who had contact with the youth justice system prior to becoming looked after, the majority continued to offend; but 16 per cent of this group received no further criminal sanctions once they had come into care (Darker et al, 2008). Such findings confirm earlier research focusing on fostered children which established that 18 per cent were cautioned or convicted while in placement even though a majority had been in trouble before coming into care (Farmer et al, 2004).

Conversely, some studies have demonstrated an onset, or increase, in offending associated with coming into care. Hayden's (2010) study followed a cohort of children for twelve months following admission to care, all of whom were placed in residential children's home. She established that around two thirds received a formal sanction for offending during that period, a pattern consistent with analysis of seven years' worth of data in the same establishments. A seminal Home Office study of offending by children, proposed that *'given the strong links between 'care' and 'criminal' careers'* preventing children coming into care might also be regarded as a crime prevention measure (Graham and Bowling, 1995: 21).

Nonetheless, where looked after children do enter the youth justice system, it appears that their experiences are different in important respects from the general youth justice population. Although published data do not allow any breakdown by type of sanction, the survey conducted for the Laming review suggested that the former group are more likely to receive a conviction, as opposed to a pre-court disposal, than other children (Laming, 2016).

As described in more detail in the following section, despite a paucity of reliable data, it is clear that they are also more likely to be imprisoned.

Research from the United States confirms, moreover, that children who have ‘dual system’ status - they have formal involvement in both the welfare and justice systems – have worse longer term outcomes than those whose involvement is limited to one system or the other (Wilkinson and Lantos, 2018). Dual system children are less likely to complete education, and more likely to experience substance misuse and poor mental health (Bilchick, 2010) than those who have care or justice experiences alone. Moreover, within the youth justice system, children with a background of care demonstrate significantly higher levels of reoffending than those without such experience (Herz et al, 2012).

## From Care to Custody

In 2016/17, 42 percent of boys in young offender institutions (YOIs), establishments that accommodate males aged 15 – 17 years, reported that they had, at some point in the past, been in local authority care. This represents a considerable rise over a relatively short period of time: in 2011/12, the equivalent figure was 27 percent (Taflan, 2017). The same study found that a lower proportion, but nonetheless equivalent to well over a third (38 percent) of children in secure training centres (STCs), which hold boys and girls aged 12-17 years, reported having experience of local authority care prior to entering the STC. Although overall numbers are small, and so percentages need to be viewed with some caution, the figure for girls was dramatically higher, at 62 per cent. There are no equivalent figures for children in secure children’s homes (SCHs) which provide for more vulnerable boys and girls in custody from the age of 10 years. Part of the explanation for the rise in children reporting having been in care is that changes associated with implementation of the Legal Aid Sentencing and Punishment of Offenders Act 2012, meant that all children remanded to youth detention accommodation automatically acquired looked after status (Hart, 2012), but given that the growth has continued since the legislative amendment, as shown in table 4, this is unlikely to provide a full account.

**Table 4: Percentage of boys in young offender institutions reporting having ever been in local authority accommodation: 2010/11 to 2016/17**  
(Derived from Murray, 2013; Simmonds, 2016; Taflan, 2017)

Year	Percentage of boys with reported care experience
2010/11	27%
2011/12	30%
2012/13	33%
2013/14	33%
2014/15	38%
2015/16	37%
2016/17	42%

There are further limitations to the data since they are based on self reporting and are therefore subject to children knowing and understanding their legal status and being willing to disclose it. In addition, as with Berman and Dar's 2013 study, cited above, the findings do not distinguish between children who were looked after at the point of incarceration and those who have an earlier – potentially much earlier – care history.

Information provided by the Youth Justice Board to the Laming review gives an estimate of the proportion of children in care when they entered custody, as recorded by youth offending teams. The figures do not disaggregate those children whose only reason for being in care is their remand status, but analysis by the review concludes that were such children excluded from the data, *'approximately 45 percent of children in custody in England and Wales may be looked after'* (Laming, 2016). According to the Department for Education (2017), 1,640 children in care in England in 2016, received a caution or conviction, equivalent to around 6 percent of all youth justice disposals issued in England during that year (Youth Justice Board/ Ministry of Justice, 2017), suggesting that children in care who come into contact with the justice system are about seven times more likely to be incarcerated than their non-care equivalents.<sup>2</sup> Evidence from Northern Ireland indicates that looked after children constitute a similar proportion of those in custody in that jurisdiction, suggesting that similar patterns of disproportionality persist outside of England and Wales: of those held in detention during 2016-17, in Northern Ireland's juvenile justice centre, 39 percent were looked after, 20 per cent being subject of a care order and 19 percent being accommodated on a voluntary basis (Criminal Justice Inspection Northern Ireland, 2018). Similarly, a study in Oregon in the United States with a sample of 531 previously incarcerated young people estimated that children with experience of foster care were four times more likely to be 'early start delinquents' than children who had never been placed in care. This factor appeared to be a more powerful predictor than coming from a family with a history of criminality (Alltucker et al, 2006). In Catalonia, of the 255 children in juvenile detention centres, more than one third (34.5 per cent) had been in residential care immediately prior to being imprisoned (Oriol-Granado et al, 2015).

Caveats with the data notwithstanding, it seems reasonable to conclude that the overrepresentation of looked after children in the custody is significantly greater than in the lower reaches of the youth justice system. It is moreover clear that the relationship between care and custody persists beyond the transition to adulthood: one quarter of the adult prison population has previously been in care (Care Leavers Association, 2014).

Within the custodial estate it is apparent that children with experience of care have different backgrounds and experiences, in important respects than those of their non-looked after counterparts. Children in YOIs, who self-report having been in local authority accommodation, are more likely to be serving a short sentence of twelve months or less but were also more likely to have been in custody previously, suggesting perhaps that they

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<sup>2</sup> The figures should be treated with a degree of caution since DfE and YJB data are not directly comparable. The former relate to the number of looked after children receiving a caution or convictions whereas the latter is based on the total number of disposals, rather than the number of children subjected to such disposals. In the first instance, some children in care will have received more than one criminal justice sanction; in the latter, the number of disposals will 'double count' those children (whether in care or not) who are subjected to more than one caution or conviction during the requisite period

are more likely to have been incarcerated for persistent offending, rather than one off, more serious matters. As shown in table 5, they are also more likely to report being parents themselves and having a disability. Looked after children in custody also have higher, self-reported, rates of emotional, mental health or drugs related difficulties. While in the custodial environment, they are significantly less likely to be on the enhanced level of the behavioural reward scheme, to be receiving regular visits from family and friends and to be taking part in constructive activities (Taflan, 2017). A thematic inspection in 2011 found that only half of looked after children in YOIs had received a visit from their social worker (HM Inspectorate of Prisons, 2011).

**Table 5: Statistically significant self-reported differences between boys in YOIs who report prior experience of care and those who do not**  
(Derived from Taflan, 2017)

Question	Percentage of children indicating agreement on a range of selected issues	
	Children with a history of care	Children with no care history
Do you have any children?	14%	6%
Do you consider yourself to have a disability?	28%	13%
Is your sentence 12 months or less?	39%	27%
Is this your first time in custody?	37%	71%
Are you on the enhanced (top) level of the reward scheme?	20%	30%
Do you have any emotional or mental health problems?	36%	22%
Were you 14 or younger when you were last at school?	49%	36%
Have you ever been excluded from school?	94%	87%
Do you usually have one or more visits per week from family and friends?	21%	43%
Do you currently take part in any of the following? – ‘nothing’	26%	17%

There is substantial evidence of the poor outcomes associated with child imprisonment. A review of the evidence in England and Wales for instance found less than one third of children in custody have suitable accommodation and employment or training arrangements in place at the point of release (Bateman et al, 2013). A more recent thematic inspection found that outcomes for children leaving custody, in terms of accommodation, education, training or employment, substance misuse, physical or mental health and rates of reoffending were for the most part ‘poor’ and ‘shocking’ (HM Inspectorate of Probation, 2015: 4). The dual status of children with a history of care will inevitably exacerbate the difficulties associated with release from custody for that group, and these difficulties frequently persist into adulthood leading to substantially higher rates of involvement with

the adult criminal justice and the benefits systems and a higher likelihood of accessing health, mental health and substance misuse services (Herz et al, 2012).

## **Explanations of the relationship between care and crime**

Broadly speaking, attempts to account for higher levels of criminalisation among the care population have tended to focus on two forms of explanation. The first notes that children in care share with other young people who offend a range of background features and characteristics (or risk factors) independent of the care system which appear to make delinquent behaviour more likely; the factors that lead to children coming into care are associated with emotional and behavioural difficulties and lowered resilience (Darker et al, 2008). A second approach highlights the potentially negative consequences of the care experience on children and points to structural features of the care and justice systems which increase the prospect of criminalisation. Thus placement instability, negative peer group influences, a lower threshold for involving the police as a mechanism of control and service shortcomings combine as factors that have been cited as making it more likely that children's behaviour will be managed through a criminal justice lens. Such dynamics are particularly at play for children placed in residential provision which can intensify, create and promote criminal behaviour (Taylor, 2006). Moreover, and this might be considered to constitute a third type of explanation, it is often argued that systemic factors, deriving from both the care and justice system, might make it more likely that children's behaviour while in care will be reviewed through a criminal justice lens, leading to higher rates of criminalisation than would occur for children who are not looked after. While logically distinct, it is clear that these explanatory models are intertwined in practice. As Staines (2016: 6), for instance, has convincingly argued:

*'children who enter care having experienced abuse and trauma are then particularly vulnerable to being negatively influenced by relationships and experiences within care. This impact of this interaction is then exacerbated by involvement in the youth justice system itself, which can further criminalise looked after children'.*

It is accordingly possible, to discern at least three possibilities:

- Adverse experiences prior to coming into care might make it more likely that looked after children will behave in a manner that infringes the criminal law
- Experiences within the care system might exacerbate pre-care experiences increasing the risk that looked after children will engage in criminal behaviour
- The response to lawbreaking by children in the care system might be more likely to result in a formal criminal justice sanction than in the case of equivalent behaviour exhibited a children who are not looked after.

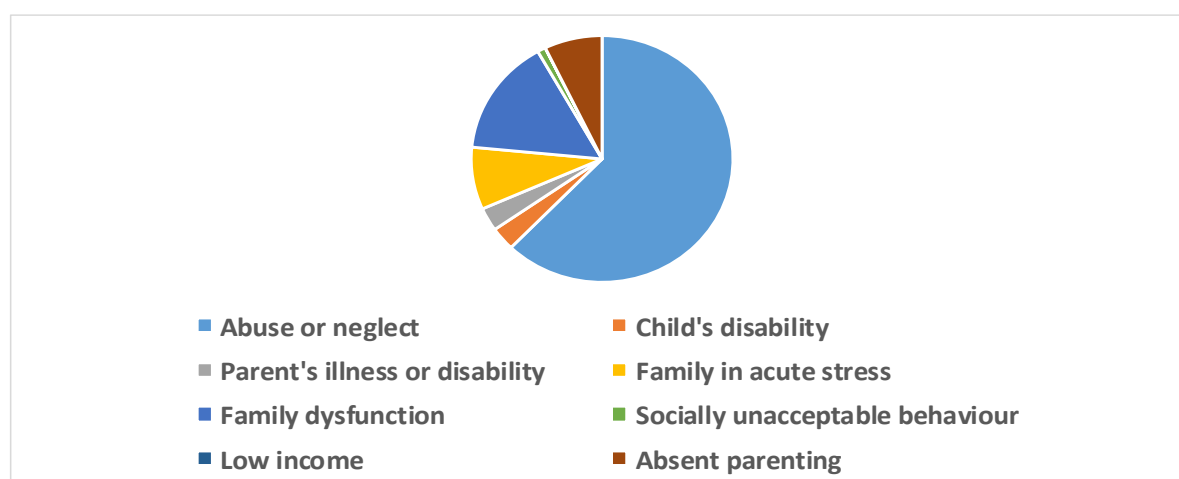
## The background of children who come into care

The threshold for entry to care is high and it is generally accepted that children do not acquire looked after status without being deemed very vulnerable on at least some indicators, as opposed to problematic behaviour per se. This assumption is confirmed, at a relatively high level of abstraction, by government statistics which, as shown in figure 1, record that the large majority of children looked after at 31 March 2017 – 61 per cent – were admitted to care on the basis of abuse or neglect. Six per cent came into care as a consequence of the child's or parental illness or disability; and just one per cent because the child's socially unacceptable behaviour (DfE, 2017). This pattern has remained largely unchanged since at least 2009 (National Audit Office, 2014).

**Figure 1**

**Main reason for children being looked after, 31 March 2017**

(Derived from DfE, 2017)



The prevalence of maltreatment among the care population has been used to support the contention that adverse experiences, prior to coming into care, account in large part for subsequent problematic behaviours, including those which bring children into contact with youth justice agencies. For example, a retrospective study exploring offending and mortality rates over a 25 – 30 year period of children admitted to care in 1980 confirmed higher levels of delinquency than for the general population but concluded that it was not possible '*to evaluate the outcomes without taking account of [the care population's] characteristics*' (Bullock and Gaehl, 2012: 1947) which frequently overlap with those one would anticipate would be associated with offending behaviour. The authors suggested that there was no evidence to suggest the experience of care itself made offending more likely; but nor was there evidence that it reduced delinquent behaviour.

It is a relatively straightforward exercise to identify more concretely areas of overlap between the populations of children in the care and justice systems. Children admitted to care, for instance, typically have poor educational engagement and achievement, high levels

of substance misuse and emotional and behavioural difficulties, but each of these is also predictive of offending (Staines, 2016). The range of overlapping factors are not, of course, independent of each: for example, while educational attainment for looked after children is poorer than for their peers such outcomes should be seen in the context of higher rates of exclusion for this former group. In 2016, the rate of permanent exclusion for looked after children was more than five times higher than that for all pupils (DfE, 2018a). But educational factors are also considered key indicators of an increased likelihood of delinquency (Stephenson, 2006); by the same token exclusion is both a consequence of, and a trigger for, involvement in criminal activity (Berridge et al, 2001).

Similarly, performance at school will be impaired where children have speech language and communication difficulties. Such difficulties are overrepresented among the care population (Staines, 2016), reflected in the high proportion of looked after children with a statement of special educational needs. In March 2017, 56 per cent of children who had been in care for 12 months or longer had such a statement (DfE, 2018a). A substantial body of evidence confirms that a disproportionate number of children in receipt of youth justice services also have developmental language disorders: in one study, involving 58 participants aged 15-17 years, 66-90 per cent of those in the sample were assessed as having below average language skills, with 46-67 percent of these *'in the poor or very poor group'* (Bryan and Hanson, 2017: 505).

Schofield et al's (2012: 3) study confirmed that *'prior to care, most looked after children have experienced many of the risk factors ... that lead to offending'* so that the correlation between care and crime *'is to a large extent, the result of shared risk factors'*. Analysis undertaken by the Ministry of Justice confirms that individuals in contact with the public law system were 2.9 times as likely as children in the general population to have received a formal disposal for offending between the ages of 10-17 years and to have committed multiple offences. Indeed the sample was *'19.2 times more likely to commit 10 or more offences between the ages of 10 and 17 than the general population'* (Forty and Sturrock, 2017: 4). The authors conclude that the findings are explicable in terms of the higher levels of neglect and abuse experienced by children in the public law system which are, in turn, associated with an elevated risk of offending.

Such correlations do not however suggest an automatic transition from care to crime. Schofield and colleagues (2012) concluded that the care system can offer effective support to children with backgrounds of abuse and neglect; and early entry into care with a stability of placement minimises the risk of offending. Such an analysis is supported by evidence that indicate that the earlier a child enters the care system, the better they perform in education, suggesting that care can address at least some of the disadvantages that looked after children bring with them (O'Higgins et al, 2015). Conversely, coming into care as a teenager has been linked to a higher risk of youth criminality than coming into care at younger age (Forty and Sturrock, 2017), implying, perhaps, that it is experience of maltreatment rather than of care that is the precipitating factor for contact with the justice system (although it is of course also possible that the care system is less effective in compensating for pre-care adverse experiences in respect of older children or that the risk of disproportionate, criminalising, responses to behaviour that infringes the law is higher for the older group). There is evidence too that looked after girls are likely to have experienced

higher levels of pre-care adversity than their male equivalents which may go some way to explain the apparent higher levels of overrepresentation within the custodial estate (Fitzpatrick, 2017; Bateman and Hazel, 2014).

At the same time, 'dual system' children tend to have elevated levels of risk by comparison with looked after children who do not offend, consistent with the observation earlier in this review that most children in care are not predestined to come to the attention of the criminal justice system (Schofield et al, 2012).

Finally, it is worth noting that children imprisoned for offending have similar characteristics and background experiences to those placed in secure accommodation on welfare grounds under section 25 of the Children Act 1989. Indeed, it has been suggested that the commonalities are such that the placement of these two groups of children in different institutions with different regimes may be '*arbitrary and unjust*' (Andow and Byrne, 2018: 50). Previous research has suggested that one important factor which determines whether a welfare or justice route is followed in any particular case is gender (O'Neill, 2001) with girls' problematic behaviour frequently constructed in terms of '*individual or family pathology*' requiring a treatment type response (Sharpe and Gelsthorpe, 2015: 50). In this context, the different dynamics that apply to the justice and care systems may be significant. As the overall number of children in custody has declined, the proportion of those in secure children's homes who are detained on welfare, as opposed to justice, grounds has increased sharply, from 35 per cent in 2008 to 46 per cent in 2018, raising questions as to whether some of the children who might in an earlier period have been subject to a custodial episode are now secured on welfare grounds (Hart and La Valle, 2016; DfE, 2018b).

## **The Care Environment**

An alternative narrative points to the potentially negative consequences of the care environment as an explanatory factor in the overrepresentation of looked after children in the justice system. Whereas 'risk factor' analysis tends to foreground the background characteristics of the care population as indicating that this group would have an increased prospect of offending whether or not they had come into care, this second explanation suggests that the nature of the care experience itself raises the prospect that children might engage in criminal behaviour. Moreover, there is evidence that when children are placed in care they are more likely to be criminalised for behaviour which would be dealt with informally in non-care settings. There are accordingly two distinct processes at play which will inevitably interact with each other: first, experience of care might be such that it exacerbates children's challenging behaviour; second, responses to that behaviour when displayed by looked after children might be disproportionate, leading to an increased risk of entry into the youth justice system. A number of features of the care system have been identified as contributing towards this process.

Perhaps foremost among these is the issue of stability. The desistance literature, which explores the processes by which young people leave offending behind them, frequently points to the importance of stability and high quality relationships with trusted adults as the most important factors facilitating the transition to a non-offending lifestyle (see for instance, Nugent and McNeill, 2017). These desired qualities are frequently in short supply



for children in the care system (Hayden, 2010). Around one third of children looked after in March 2017 had experienced one or more placement moves in the previous year; one in five had experienced at least two moves over the previous two years. Changes of placement have the potential to disrupt education and a quarter of looked after children who were enrolled in school experienced a mid-year change of school during the course of the previous twelve months. A lack of consistent placement also inevitably impacts on children's relationships with carers, which are usually broken abruptly at the point of moving. Relationships with adults are further attenuated by the fact that a quarter of children had a change of social worker, whether or not they experienced placement breakdown. Importantly from the current perspective, children with 'behavioural needs' – who may accordingly be at higher risk of offending in any event – *'are significantly more likely to experience multiple placement moves and mid-year school moves, compared to children with other types of needs'* (Children's Commissioner for England, 2018). The impact of such experiences are necessarily cumulative: placement change is associated with worst educational outcomes which in turn is indicative of a higher risk of involvement with the justice system (Jones. 2011). Schofield et al's (2012) study confirmed that children who come from abusive backgrounds do not have stable placements, and are not provided with appropriate professional support, are at an increased risk of a range of poor outcomes that include offending behaviour.

Such patterns of instability were a recurrent theme identified by children who gave evidence to the Laming review (2016). Significantly, disruptions of this sort were explicitly linked to their delinquent behaviour, an association confirmed by other research (see for instance, Schofield et al). As one 15 year old noted:

*'I have been to 16 schools and I have been in 15 different placements all around the country ... All of my offending has been whilst in care'* (Laming, 2016: 9).

The literature review accompanying the report noted a strong correlation between *'placement instability and offending behaviour, even after controlling for prior problem behaviour'* (Staines, 2017: 104).

A child's identity – how he or she understands their history, present and future – is also an important factor determining how they respond to their situation and accordingly impacts on whether or not they are likely to engage in delinquent activities (Hazel, 2017). Developments in what has become known as desistance theory in particular, have pointed to the importance of a child's identity in determining the extent to which they become caught up in the justice system, and once identified as adjudicated offenders, how effectively they are able to make the transition to establishing a pro-social identity that will allow them to make the journey to a non-criminal lifestyle (Maruna, 2001).

Children removed from their birth families frequently struggle to come to terms with the loss and disruption associated with that episode, leading to long term feelings of anger, distrust of authority, and a sense of disempowerment which can contribute to problematic behaviour, particularly where high quality relationships are not quickly cemented with professional staff (Laming, 2016). These sentiments are reinforced by experiencing the stigma which is frequently attached to being in care (Oakley et al, 2018; Day 2017). Around

half of children in care are concerned about differential treatment as a consequence of living apart from their families; the longer children spend in care the more likely they are to report experiences of discrimination (Fitzgerald, 2014).

The ensuing challenging behaviour might lead directly to involvement in the criminal justice system but it also increases the prospect of placement breakdown triggering a vicious circular dynamic (Day, 2017). Moreover, the dual status of being embedded simultaneously in the care and justice systems is likely to have a further negative impact on identifying making it less likely that children will form a positive self-image (Stein, 2008) and pose additional challenges to successful desistance (McMahon and Jump, 2018). The consequences of acquiring a criminal record and the associated barriers to obtaining training or employment compound the prospect that children will struggle to leave their criminal past behind them (Hayden and Graves, 2018). Indeed, Stanley (2017), considering the trajectories of children from care to custody in a New Zealand context, found that the institutionalised environment of residential care caused children to '*internalise*' custody and view eventual imprisonment as an adult as inevitable.

A further feature of care that aggravates the likelihood of placement breakdown is the tendency for children to be placed outside their local authority area. In 2011, the then Children's Minister Tim Loughton sent a letter to councils emphasising the need to reduce the number of out-of-authority placements. Subsequent guidance, issued in 2014, confirmed that such placements could only be made with the approval of the responsible Director of Children's Services (DfE, 2014). This acknowledgment, at policy level, that child care good practice involves placement close to the child's home wherever possible, appears to have had a limited purchase on practice. In March 2012 there were 2,250 out-of-authority placements but by 2017 this had risen by 64 per cent to 3,680 (Hansard, 2018). This has immediate implications for children who find themselves living far from their in an unfamiliar environment, as being at a distance can increase feelings of dislocation, disempowerment and interrupt ties with family, schools and education (Oakley et al, 2018). But it can also have a 'knock on effect' in the host areas, limiting the potential for in-authority placements, thereby creating a negative cycle. As Anne Coffey MP observed, speaking in a parliamentary debate in May 2018 on the implications of this dynamic for the North West of England:

*'The system seems to work for the providers, but not for the children. The failure of the care market can be demonstrated vividly by the 2017 north-west placements census. Placement Northwest is a regional children's service that assists the 22 authorities in the North West that make out-of-authority placements. It said in its recent report: 'There remain many young people from the North West placed outside the region because of the 693 beds located here taken by young people from the rest of the country.'*

While guidance requires that placing authorities notify host authorities of children placed in their area, this frequently does not happen and in some cases children are accommodated in '*establishments which had been deemed unsuitable by the local authority in which the home was located*' (HM Inspectorate of Probation, 2012: 8). In any event, the authority in

which out-of-area children are placed has no responsibility for them. Contact with responsible social workers, family and friends is often infrequent (Shaw, 2017; Pitts, 2018). The net effect is to make it more likely that children will offend (Shaw, 2017; Herz et al, 2012).

As might be anticipated, children would, if given the choice, rarely opt to be placed at a distance from people they know and places with which they are familiar (Shaw, 2017). Unsurprisingly, perhaps, there is high incidence of children absconding from out-of-area placements. Between 2015 and 2017 the number of children going missing from such placements increased by 110 per cent, compared with 68 per cent for children going missing from placements in their own area (Hansard, 2018). One of the major influences that determines whether children run away is a sense that they are not being listened to, particularly in relation to placement decisions (Children's Rights Director, 2012). Placement instability too is associated with more frequent absconding (Ofsted, 2013).

'Missing' episodes are known to be associated with involvement in offending, victimisation and exploitation (HM Inspectorate of Probation, 2012; Biehal and Wade, 1999). In a 2017 report the National Crime Agency observed that drug dealing gangs were deliberately targeting vulnerable young people missing from care:

*'Children assessed as vulnerable due to missing episodes do appear to be more regularly linked directly or through association to drug networks operating in the areas they reside'* (National Crime Agency, 2017: 14).

The nature of the placement, as well as its location, has a considerable influence on outcomes. Children in residential provision are significantly more likely to fall foul of the justice system than those placed with foster carers (Hayden and Graves, 2018). Analysis published by the Howard League (2017) indicates that the rate of criminalisation for children placed in children's homes is more than three times that for other looked after children: those aged 13–15 years in residential provision are six times as likely to have a proven offence as those in other placements. Earlier data suggest that the differential may be even higher (see for instance, Nacro, 2012). Such findings are consistent with research in other countries which show that *'delinquency is one of the biggest problems facing youths in residential care'* (Oriol-Granado et al, 2015:2, see also Herz et al, 2012 for a similar conclusion in relation to the United States).

Martin Narey (2016), in his recent review of residential care for the government, contends that such differences are explicable in terms of the characteristics of children that lead them to be placed in the various forms of provision rather than the placement itself. Higher rates of offending in residential care may indeed be, at least in part, a function of age because those in such provision tend to be older than those in foster care (Horrocks and Karban, 1999) and as noted above, older entry to care is associated with higher levels of offending. The international literature confirms that children placed in residential care tend to display more problematic behaviours (Oriol-Granado et al, 2015) and may accordingly be regarded as harder to place or have experienced previous placement breakdowns (Narey, 2016). The concentration of the most damaged and behaviourally challenging children in residential

care is likely to generate greater difficulties of managing the group (Hayden and Graves, 2018). Challenging behaviour within the home may itself frequently be a response by children to previous rejection by a range of different agencies. Criminalisation of such behaviour can then *'compound the child's sense of rejection and the damage to their mental health and emotional well-being'*, generating a circular dynamic (Howard League, 2017a: 3).

However, the conclusion that such factors satisfactorily explain all of overrepresentation in the justice system of those in residential provisions has been criticised for a focus on individual level explanations and for ignoring the potential impact of the placement itself to increase the risk of offending behaviour (Staines, 2017; Fitzpatrick, 2017). For instance, research has suggested that exposure to older peers, some of whom are already offending, might have a negative impact on the behaviour of younger children placed in children's homes. Conversely, conflict between peers might lead to criminalisation directly or increase the likelihood of placement breakdown (Shaw, 2010; Blades et al, 2011). The opportunities for developing close, and protective, relationships with carers may also be more limited within institutional settings than in family placements (Day, 2017; Howard League, 2018); and behaviour management regimes are likely to be more bureaucratic, with less flexibility or potential for adaption to accommodate the individual child (Blades et al, 2011). Children in residential care sometimes consider that the rules, often associated with incentive schemes, are petty and unreasonable, increasing the likelihood of infringement and conflict with staff (Day, 2017). A recurrent theme is that children may also deliberately misbehave in placements where that they have not chosen or are unhappy with (a common feature of out of area placements in particular) in an attempt to trigger placement breakdown (Day, 2017).

Nearly 70 per cent of children's homes in England are managed by private providers (Ofsted, 2016) who have responsibilities to their shareholders as well as to the welfare of the children whom they accommodate (Howard League, 2018). Such establishments are disproportionately concentrated in parts of the country where costs are lower (Scourfield, 2007). Such areas are frequently those where levels of deprivation, the incidence of crime and prevalence of substance misuse are higher, increasing the risk that children placed away from home might become involved in criminal activity or go missing with the attendant risks. Moreover, the quality of staff and the physical environment in such establishments is variable (Staines, 2017) and work to promote positive behaviour among children could be *'greatly improved'* (DfE, 2013: 7).

While Narey (2016) tends to dismiss such episodes as exceptional or anecdotal, there is also clear evidence that children in residential provision are systemically disadvantaged because some establishments involve the police in respect of behaviour which would not merit such a response in a family placement or the child's own home (Howard League, 2017a). Research which captured the views of more than half of the 43 police forces in England and Wales found that all of them reported incidents of 'call outs' by children's homes for minor incidents which the police considered could have been more appropriately handled internally (Howard League, 2017b). In some instance, *'police action ... [is] used as a way of imposing discipline in an attempt to manage behaviour within a residential setting'* HM Inspectorate of Probation, 2012: 14). The consequences of such a tendency is confirmed by sentencers (Fitzpatrick, 2014). The Magistrates' Association has reported that looked after

children routinely appear in court, from residential establishments, for offences '*which would certainly not reach court if the children lived in conventional families*' (cited in House of Commons Justice Committee, 2013: 9).

Research has also suggested that girls may be at greater risk of having their behaviour while in care unnecessarily criminalised because some practitioners feel that they are more difficult to work with (Fitzpatrick, 2017).

There is accordingly clear evidence that, while children who come into care tend to have backgrounds which make it more likely that they will come to the attention of the youth justice system, the care system might itself accelerate the prospect that offending behaviour will occur and that, in turn, responses to such behaviour make it more likely that children will be criminalised. The care environment is, on occasion, either unable to compensate for prior adverse experiences or can, in some instances, exacerbate them. In reality the two explanatory narratives are intertwined and disarticulating the relative contribution of each is inherently difficult. As Jo Staines has convincingly argued, the impact of care on the individual child will depend upon the interplay of a range of factors including: their pre-care history; their individual characteristics; the extent to which they display resilience; the circumstances under which they became looked after; the quality and nature of care placements; and their relationship with social workers, care staff and peers (Staines, 2017). Local authorities differ in the extent to which they recognise, and accordingly attempt to address, the impact of these specific interactions on looked after children, but there is evidence that where efforts are made to enhance the experience of children in line with the evidence, it can have a positive impact (Laming, 2016; Schofield et al, 2012).

### **The response of justice system to looked after children**

The youth justice system is not necessarily a neutral arbiter that deals with children referred to it in an equal fashion irrespective of their care status. Indeed, there is evidence that practice within the criminal justice arena can reaffirm the harmful impact of pre-care adversity, the potentially negative influence of the care environment and the increased risk of criminalisation through the responses of care providers to challenging behaviour, by imposing differential forms of treatment on looked after children.

As gatekeepers to the system, the police can have a significant impact on the extent to which children are progressed through it. Officers do not always regard children as vulnerable by dint of age alone and this, combined with an interpretation of policies relating to domestic abuse that require positive action to be taken, can lead them to be more proactive in arresting, and removing from the premises, children engaged in disruptive behaviour in residential establishments (HM Inspectorate of Constabulary, 2015). Moreover police forces are frequently complicit with local authorities in detaining such children at the police station when they would otherwise receive bail rather than pressurising children's services to find suitable accommodation (HM Inspectorate of Constabulary). The Howard League (2016) has argued that this allows:

*'private providers of children's homes [to use] police cells as respite to cover staff shortages and because staff were not ... competent to deal with children's behaviour' (Howard League, 2016: 4).*

More broadly, there is a widespread perception among children that they are not respected, and are discriminated against, by the police and this sentiment is felt more deeply by some children in care, on occasion reinforced by their, or their families', prior experiences of contact with the police (National Police Chief's Council, 2017; Blades et al, 2011; All Party Parliamentary Group for Children, 2014). The Crown Prosecution Service has adopted a policy that encourages consideration of options other than prosecution in cases involving looked after children. This prescription applies specifically to children in residential establishments but is grounded on principles that *'may be helpful'* in determining whether a charge is in the public interest in other cases where the suspect is a child in care (Crown Prosecution Service, undated). The House of Commons Justice Committee, when it considered the issue, was persuaded by evidence that the policy did not seem to have had a sufficiently positive impact on children in residential care; its impact on other looked after children in accordingly also likely to have been limited (House of Commons Justice Committee, 2013). This is significant for outcomes further into the system: there is a positive correlation between lower levels of diversion from court and a higher use of custody (Bateman, 2012). One might therefore anticipate that if looked after children have a greater prospect of prosecution, custodial rates for this group will be higher.

A further relevant consideration at the pre-court stage is data demonstrating that black children are three times more likely to be arrested and, once arrested, almost ten per cent more likely to be charged, than their white peers (Uhrig, 2016). There are no published data that disaggregate ethnicity, care status and involvement in the youth justice system, but since BAME children are overrepresented in the care population, it seems likely that the tendency for such children to be drawn into the criminal justice system at higher rates than the general population will also have an adverse impact on children in care. Put simply, if the justice system operates in a manner which disadvantages BAME children, this impact will be felt disproportionately by the care population which has a higher ethnic minority composition than the general child population.

An equivalent dynamic is likely to operate in the court arena, where BAME children are one fifth more likely to receive a custodial sentence in the youth court and 72 per cent more likely to be tried in the crown court where long term custodial sentences, in excess of two years duration, become available (Uhrig, 2016).

Where direct evidence of court outcomes for looked after children exists, it is mixed but tends to point towards harsher treatment meted out to those in care. Some children themselves report that their care status leads them to receive more intrusive penalties than others who commit the same offence, but the same study interviewed children who considered that being in care made little difference to the outcome and a few who believed that the court could be more lenient to make allowances for disrupted backgrounds (Blades et al, 2011).

Other evidence is potentially less equivocal. The Laming review (2016) found that looked after children not infrequently attend court without the support of an appropriate adult or carer, confirming earlier evidence in this regard (Centre for Social Justice, 2012). This lack of support has the potential to trigger a more intensive disposal if magistrates consider this to be an indication of a lack of appropriate input from children's care. American research suggests that although children in care tend to enter the justice system for less serious offences, they are nonetheless likely to receive more onerous disposals because of sentencers' negative understandings of the nature of their living arrangements and a perception that risks of reoffending are higher (Morris and Freundlich, 2004).

Systemic factors also play a role in such contexts. Since children in care are more likely to be prosecuted for behaviour in the home environment, the courts may be less inclined to grant bail because to do so would, unless children's services offer an alternative placement, mean returning the child to live with the victims of the offence. On occasion, too, the adult accompanying the child may also be an interested party to the offence where, for instance, a residential worker attends court in respect of an offence committed within a children's home, generating a conflict of interest (Laming, 2016). This is a more specific instance of more general potential for child care professionals to present the court with an unduly negative impression of children in care, an impression which may be replicated in any pre-sentence report, that would not be before sentencers in the case of a non-looked after child (Shaw, 2014). As one magistrate told the Laming review:

*'This occurs when the social worker or carer, accompanying the young person, has nothing positive to say in their mitigation and has no knowledge of their progress within the Home or their plans for the future. This absence of context makes sentencing harder and is likely to lead to a harsher interpretation of events and the imposition of a tougher sentence than would be the case with full information from supportive parents' (Laming, 2016: 101).*

Such findings are also relevant when considering the over-representation of looked after children in custody. Geographic differences in the use of imprisonment for children are partly explained by the fact that levels of incarceration are higher in areas where diversion from prosecution is lower (Bateman, 2012). To the extent that looked after children are less likely to benefit from diversionary measures than other children, they are accordingly more likely to receive custodial sentences. Similarly, there is an inverse relationship between sentencers confidence in the quality of pre-sentence reports and community sentences and the rate of custody (Bateman and Stanley, 2002). One would anticipate that a similar dynamic might operate within a single local authority where the courts' confidence in care planning or the ability of children's services to provide adequate support to looked after children is undermined. In that event, an increased use of custody might occur either because of negative information available to the court about children in care or, alternatively, a lack of confidence that the local authority will ensure adequate support to ensure the child's welfare and reduce the risk of reoffending. Research on sentencing of breach of court orders by children has confirmed that on occasions magistrates are tempted to impose more serious disposals, including custody, in an attempt to ensure that services are provided or, more basically, that the child is safe (Hart, 2011).

## **The challenges of custody and resettlement**

As noted above, children in care are disproportionately represented within the child custodial population and, once in the secure estate, appear to endure significantly more adverse experiences. The latter is confirmed by the findings of the Laming review. While acknowledging that a small number of looked after children regarded imprisonment as offering stability or an opportunity to get away from an unsafe environment in the community – itself an indictment on the standard of provision in the community –, the review reported that many more were unable to find anything positive to say about the custodial episode and considered that it highlighted the differences between themselves and other detainees. For instance, children in care felt that others looked down on them because they received fewer visits; they also reported receiving less financial support than their peers, an observation confirmed by social workers from within the YOIs who gave evidence to the inquiry (Laming, 2016). Earlier research suggested that half of children in care received no pocket money while in custody, meaning that they could not always make phone calls (HM Inspectorate of Prisons, 2011). Staff did not appear to be aware of, and to be indifferent to, children's care status which made it more difficult for looked after children to develop a close relationship with them (Laming, 2016). This is particularly significant given that research in the United States has pointed to the importance of good relationships between children and staff in detention settings to the perceived likelihood of success on release (Marsh and Evans, 2008). Indeed, one might reasonably anticipate, more generally, that the background and experiences of children in care would impact negatively on the extent to which the resettlement provision is effective.

An extensive review of the resettlement literature concluded that while, for most children, the period of transition from custody to the community provided a 'window of opportunity' during which children were enthusiastic about leaving offending behind them, that enthusiasm was often punctured by a lack of adequate and timely support, leading to rapid disillusionment. Despite some promising initiatives, there was, more commonly, a failure to commence planning for release from the start of the sentence and a corresponding failure to ensure that suitable accommodation and education, training or employment were in place sufficiently in advance of the release date (Bateman et al, 2013: 14). A more recent thematic inspection of resettlement provision confirmed that outcomes continued to be poor and that provision was insufficiently informed by the evidence base. The 'tick box' nature of resettlement planning was recognised by children who became disengaged and disenchanted as a consequence (HM Inspectorate of Probation, 2015).

In the context of such findings, one might reasonably anticipate that the differences in background and experiences of looked after children might also be reflected in the extent to which they are effectively resettled upon their release from custody. A thematic review in 2011, suggested that such negative expectations were borne out in practice. For example, a third of safeguarding teams within custody felt that social services no longer supported children in care once in custody as there was an impression that they had discharged their responsibilities. Half of the twelve children in care interviewed indicated that they were concerned about not knowing what plans were in place for them and they were particularly anxious that provision for accommodation would be made too late: only one child had confirmed living arrangements at the point of interview and seven had no idea where they



would reside on release. The report confirmed that a lack of accommodation might make early release less likely (HM Inspectorate of Prisons, 2011).

More recent evidence indicates that the situation has not improved markedly in the intervening period. A self-report survey of boys in YOIs published in 2017 showed that while looked after children were more likely to know who to contact for help with problems they might have on release, they were also less optimistic that they would be able to avoid such difficulties (Taflan, 2017). As shown in table 6, a significantly higher proportion of boys in care anticipated problems with housing, employment, finances and avoiding unhealthy relationships, issues which are inevitably associated with an increased prospect of further offending (Bateman et al, 2013). Children with a history of care were almost twice as likely as their peers to consider that they would have trouble accessing health services once they were released (Taflan, 2017).

**Table 6: Statistically significant self-reported differences between boys in YOIs who report prior experience of care and those who do not**  
(Derived from Taflan, 2017)

Question	Percentage of children indicating agreement on a range of selected issues	
	Children with a history of care	Children with no care history
Do you think you will have a problem with the following, when you are released:		
Finding accommodation?	34%	22%
Getting a job?	54%	42%
Money and finances?	38%	26%
Continuing health services?	13%	7%
Avoiding bad relationships?	23%	13%

It should be noted that these findings relate to boys in YOIs, aged 15 -17 years. The lack of focus on younger children, and on females, in custody remains a significant gap in the research base, but there is little reason to believe that the situation would be markedly better for the younger age group or girls.

In the context of these disappointing findings, it is significant that criminal justice professionals, both in custody and in the community, frequently fail to identify children who have looked after status or have access to leaving care services, and, in any event, are unclear about the entitlements which such status ought to bring with it. As a consequence, they are not well positioned to ensure such children receive the additional support which should be forthcoming (Fitzpatrick et al, 2016). By the time they are released from custody, many children with care experience will be care leavers; about one third of looked after children leave care before their 18 birthday (National Audit Office, 2015). There is, accordingly, a clear potential for pathway plans to support and enhance resettlement provision. This potential is generally not, however, realised in practice: the evidence suggests that the needs of care leavers in custody are frequently overlooked outside of areas where specific attention has been directed to improving provision (Fitzpatrick et al,

2016). This is perhaps unsurprising given that Ofsted has found that care leaver services are inadequate or require improvement in two thirds of local authorities and the National Audit Office (2015) has pointed to deteriorations in leaving care provisions over a number of years.

Recent work on effective youth resettlement has drawn on desistance theory to emphasise the importance of understanding effective resettlement as a process that involves the child making a journey through and beyond custody that may, where successful, involve a shift in self-image and identity as he or she develops aspirations to live a non-offending life and sees him or herself in pro-social terms (Hazel et al, 2017). This is particularly problematic in an institutional context since the experience of custody tends to reinforce, in those held within it, the identity of being an offender (Nielsen and Kolind, 2016). The role of practitioners, on this account, is to ensure the provision of both personal support and structural support to children in custody to facilitate the journey. The former involves helping the child to understand who they are where they want to be, focusing on their strengths and future aspirations, and providing a sense of agency that enables them to achieve their goals; the latter consists in ensuring that obstacles to desistance are overcome and practical supports – such as stable accommodation and financial means – are in place. There is a necessary connection between the two since the child may only recognise the importance of, for example, accessing educational provision if they are clear about its benefits for their longer term goals and, conversely, the nature of practical support offered is likely to facilitate the achievement of those goals (Hazel et al, 2017). The evidence adduced hitherto in the current review suggests that resettlement provision for children in care has to address a set of more deep rooted and complex issues than may be the case for children without care status. It also suggests that the provision of the requisite personal and structural support may be less likely to be forthcoming for looked after children. The lack of access to social capital, and reduced engagement with pro-social institutions, which appears to be characteristic of children in care, undermines the potential for them to develop a sense of agency and optimism for the future: the ‘window of opportunity’ is more likely to be missed and longer term desistance made more problematic.

## **Conclusion: addressing the criminalisation of looked after children and minimising the adverse experiences of custody**

The evidence reviewed above provides stark confirmation of a concerning, and deeply iterative, phenomenon whereby higher rates of criminalisation and incarceration for looked after children are, at least in part, explained by dynamics associated with the care system. Entry to care can, in some cases, fail to compensate for, or exacerbate, pre-care adverse experiences; moreover, responses to challenging behaviour by children in the care system are more likely to involve criminal justice agencies. The dynamics of the youth justice system can amplify such effects by ensuring higher rates of prosecution that make deprivation of liberty more likely; and the custodial environment appears to be particularly damaging for children in care impeding effective resettlement and leading to poorer longer term outcomes.

Following Lord Laming's Review (Prison Reform Trust, 2016), most national and local agencies in England and Wales accepted that looked after children are sometimes needlessly criminalised and some measures have been identified to address this phenomenon. These include the implementation of joint working protocols between children's homes and local police forces, based on the best of existing local practice (DfE, 2016).

At present, however, little is known about:

- the respective pathways of children in care, and those who are not, into, through and out of custody;
- how the two groups understand what has led to their incarceration;
- how they see their future and understand the support that may be available to them;
- and the extent to which different decision or additional input at key decision making junctures might have the potential to interrupt the damaging consequences that currently accrue in too many cases.

It is hoped that the research funded by the Nuffield Foundation, described in the introduction to this review will go some way to address those gaps.

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