

Children and Social Work Bill

Prison Reform Trust briefing for the second reading in the House of Lords
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Summary

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective penal system. PRT established the independent review, In Care, Out of Trouble, to examine the disproportionate representation of looked after children in the youth justice system. The review was chaired by the crossbench peer Lord Laming.

- The Prison Reform Trust welcomes many of the provisions of the bill and particularly the provision to enshrine in law the principles of corporate parenting.
- In line with the findings and recommendations of Lord Laming's independent review, we recommend the principles are amended and strengthened to include a duty to protect looked after children from unnecessary criminalisation and prevent offending.
- We recommend that the bill is amended to include a duty of cooperation on local authorities and other agencies in respect of corporate parenting, including mental health and health services and commissioning bodies, education services, the police and criminal justice agencies.

In Care, Out of Trouble

The review conducted its inquiry between June 2015 and May 2016 and received evidence from more than 250 individuals and groups, as well as holding meetings and making a series of visits to different parts of England and Wales. Its work was supported by an active review team representing many of the main stakeholders in the area and, in particular, by the participation of a group of children and young people who had recent experience both of growing up in care and of the criminal justice system. The executive summary of the review is available at <http://www.prisonreformtrust.org.uk/ProjectsResearch/CareReview>

The review found that strong and determined leadership at national and local level is at the heart of reducing the unnecessary criminalisation of children in care. It recommends the establishment of a cross-departmental cabinet sub-committee to provide leadership, including through the development of a concordat on protecting looked after children from being drawn into the criminal justice system which social care and education services based in local authorities, police forces and others will be called on to sign up to. In addition, the review recommends better early support for children and families at risk, the strengthening of

joint working between children's social care services and criminal justice agencies, improvements in police practice to reduce the prosecution of children and young people in care and a greater emphasis on the importance of good parenting by the state. We are pleased that many of the recommendations of the review, particularly the introduction of corporate parenting principles, are reflected in a number of the bill's provisions.

Key findings:

- Children in care are significantly over represented in the criminal justice system and in custody. The review estimates that up to half of all children in custody have been in care at some point.
- Children in care in England are six times more likely to be cautioned or convicted of an offence than other children.ⁱ
- 94% of looked after children in England and Wales do not get into trouble with the law.ⁱⁱ
- The majority of children in care – 61% in both England and Wales - are looked after by the state due to abuse or neglect. Only a very small fraction of children become looked after for socially unacceptable behaviour, 2% in England and 4% in Wales. This category could include offending.ⁱⁱⁱ
- Children in care who are at risk of offending need consistent emotional and practical support from their carers and other professionals and are likely to be especially vulnerable when they leave care.

Young people with experience of care and the criminal justice system told the review:

- Separation from their birth family understandably hurts and the care system must do more to help them come to terms with this
- Frequent changes in who looks after them, where they live, where they go to school and who offers emotional and practical support damage their prospects
- Support from peer mentors would help
- Clarity about what they can expect from the care system is crucial, as is involvement in decisions that affect their lives
- They often feel isolated and unsupported at critical moments, not least if they have to appear in court or spend time in custody
- Some young people from minority ethnic backgrounds feel they are subject to negative stereotyping on the grounds of their race, particularly by the police, and that their cultural needs are not consistently met by children's social care services.

The review also found that:

- The rate at which a minority of children move from care into the criminal justice system is not inevitable. It can be reduced - for example by as much as 45% over four years in Surrey, as a result of effective local practice;
- Good practice can dramatically reduce the long term costs that arise when young people get sucked into the criminal justice system unnecessarily - one study calculated a return of £3.41 for every £1 invested.

The Children and Social Work Bill - commentary

Part One

Clause 1 – corporate parenting principles

We welcome the introduction into legislation for the first time of explicit corporate parenting principles to which local authorities must have regard. Evidence submitted to the review highlighted the crucial role that good parenting by the state has to play in protecting children and young people in care from unnecessary involvement in the criminal justice system. The inclusion of corporate parenting principles in the bill therefore represents real progress.

We would like to see the principles amended to include an explicit requirement on local authorities to protect looked after children and young people from unnecessary criminalisation and prevent offending. While existing guidance in this area is generally sound, evidence received by the review has highlighted that compliance by local authorities is not consistent. An explicit statutory commitment to prevent the unnecessary criminalisation of looked after children would ensure sufficient attention and priority is given to this by all local authority areas. (Recommendation 4 of the review sets out proposals for strengthening local leadership.) **Furthermore, given the inconsistent application of existing guidance by local authorities, we are concerned that the wording at sub-clause 1(4), which requires local authorities to 'have regard' to such guidance, is not sufficiently robust, and should be strengthened.**

To support the implementation of clause 1, we recommend that the bill is amended to include a duty of cooperation on others in respect of corporate parenting, including local authorities, children's, social care, mental health and health services and commissioning bodies, education services, the police and criminal justice agencies. The review has found overwhelming evidence that effective joint working between local authorities and other agencies can be highly effective in protecting looked after children from unnecessary involvement in the criminal justice system and preventing offending. We would welcome an amendment to clause 1 to introduce a duty on other agencies to co-operate with the local authority in respect of corporate parenting, including for the prevention of unnecessary criminalisation.

Clause 2 – local offer for care leavers

The local offer and the new care leavers covenant provide an opportunity for local authorities to set out how they intend to meet their obligations to care leavers and to encourage the spread of best practice. **It is also important that children and young people in care know what they can expect from the local authority and other agencies and that they have the necessary support to enable action to be taken when those expectations are not met.** The review heard evidence from young people that they did not receive the support they were entitled to while they were in care, such as practical help from social workers and pocket money, and that they only found out about those entitlements after they had left care. We therefore consider it would be beneficial for similar provision to be made for children and young people who are still in care.

Evidence submitted to the review highlighted the importance of a strategic, multi-agency approach to protecting children in care and care leavers from being drawn into the criminal

justice system. Therefore, **it is crucial that the offer makes clear how local authorities will work with local partners, including the police, mental health, children and social care services** to achieve this. The concordat proposed by the review (Recommendation 1) provides a mechanism for this in relation to children and young people in care.

(Recommendation 5 of the review sets out proposals for improving joint working between children’s social care and social services, and criminal justice agencies.)

As part of the local offer, it is important that care leavers are able to access a range of services to meet their needs including appropriate housing, financial support, access to education and training, personal advisers and effective pathway planning. It is vital that care leavers are able to access child and adolescent mental health services (CAMHS) during their transition out of care and into independence. Young people leaving care are vulnerable and may be at particular risk of mental health problems. 37% of looked after children in England have emotional and behavioural health that is considered to be a cause for concern, and a further 13% are considered borderline.^{iv} However, research by the Children’s Society found that care leavers are only identified in 22% of CAMHS referral forms and just 11% of Trusts offer care leavers priority access to their services.

Clause 3 - advice and support on request

We welcome the introduction of a new duty for the local authority to provide advice and support if requested by a care leaver up until the age of 25. Currently care leavers over the age of 21 but who are under 25 are only entitled to support if engaged in a course of education or training. While this may have been intended to incentivise care leavers into work or study, the result has been to penalise those without access to opportunities and who may be most in need of additional support. (Recommendation 10.3 of the review proposes that support for care leavers who are not in education or training should be extended from 21 to 25 years, matching the support received by care leavers in training or education.)

It is important for the government to clarify how hard to reach groups – including care leavers in custody – will be able to access entitlements under the new duty. A large number of young adults in prison have experience of the care system. However, the Prison Reform Trust is aware of many care leavers in custody who are not able to access their entitlements under the existing duty, despite being engaged in a course of education or training in the prison. We note that subsection (7) of the new clause includes a duty on local authorities to “take steps to inform a former relevant child— (a) of any right that the former relevant child has to make a request to the local authority under subsection (2), and (b) of the effect of making a request.” **This should include steps to ensure that care leavers in custody are identified, that their entitlements under the duty are communicated to them in a way that is accessible and easy for them to understand (a disproportionate number of looked after children have an unmet or unidentified communication need) and that they are supported by the prison in contacting, and in ongoing liaison with, the local authority.**

Clause 8 - care orders: permanence provisions

Clause 8 amends section 31 of the Children Act 1989 to clarify the extent of permanence provisions to be taken into account by the court when considering whether to make a care order in respect of a child or young person.

The review agrees that achieving permanence for children and young people in care is of critical importance to their wellbeing. The review is concerned about the continuing levels of instability in care placements which are so detrimental to wellbeing and we have heard evidence that achieving stability is essential to protect looked after children from unnecessary criminalisation.

In order to promote placement stability, suitable care placements must be available locally to meet local need and placement choices must be made in consultation with children and young people and in the child's best interests. It is also essential that carers, whether in foster care or residential care and whether provided by the local authority or an independent provider, must have the necessary training and support to ensure the wellbeing of the children in their care. This must include promoting children's social development and managing any challenging behaviour without unnecessarily involving the police. This has been done successfully in some areas through the use of restorative practice.

The review has recommended that a rigorous review must take place where any child experiences three or more placement moves within 12 months, and where any placement move arises following a police call out in relation to that child's behaviour, in order to learn why this happened and how it can be avoided in future, and that the results of such reviews are regularly reported to the lead member for children's services. (Recommendation 6 of the review sets out the corporate parenting responsibilities which should be emphasised, including in relation to achieving placement stability.)

Part Two

The review heard evidence of the central importance of social workers, working alongside carers, to offer effective, practical and emotional support to children and young people in care, to make effective decisions in their best interests, and to help protect them from unnecessary criminalisation. We welcome the focus in the second part of the bill on improving the regulation, training and professional standards of social workers.

We also note the need for adequate training and support for carers, whether in foster care or residential care and whether provided by the local authority or an independent provider, in order to ensure the wellbeing of children and young people in care and protect them from unnecessary criminalisation. We consider that there is welcome scope in this Part of the Bill to include provision in this respect, which would strengthen and extend the provision made in the Quality Standards for residential care.

Gaps in the Bill

Preventative policy

A serious gap in the bill is the lack of preventative policy. For nearly two-thirds of children in care, the main reason they are looked after is that they have suffered abuse or neglect. Early support for children and families plays an important part in protecting children and young people in care, and those on the edge of care, against criminalisation. The economic benefits of effective early support services have been established by the Early Intervention Foundation. Central and local government must work together to ensure that this essential work is sustained and developed. (Recommendation 3 of the review sets out proposals to provide early support for children and families at risk.)

Minority groups

Not enough is known about the relationship between the involvement of looked after children and young people in the criminal justice system and their ethnicity, faith, gender or disability. Action is needed by all relevant agencies in order to fulfil their obligations under equality law and give looked after children in minority groups the particular protection from criminalisation that they need and deserve. Looked after children and young people who are black or from other minority ethnic backgrounds, and children and young people of Muslim faith, are over-represented in the criminal justice system and some minority ethnic young people feel discriminated against, particularly by the police.^v The review has also heard concerns about the level of support offered to foreign national looked after children and has heard reports of the continued prosecution of children and young people in care who are victims of trafficking, despite legal protections. (Recommendation 7 of the review sets out proposals to respond to the particular needs of looked after children and young people in minority groups.)

ⁱ Department for Education (2015) Statistical First Release SFR 34/2015, London: DfE

ⁱⁱ Ibid.

ⁱⁱⁱ Department for Education (2015) Statistical First Release SFR 34/2015, London: DfE; Welsh government (2015) StatsWales, Children Looked After, Cardiff: Welsh government

^{iv} Department for Education (2015) Children looked after in England (including adoption and care leavers), year ending 31 March 2015: additional tables, London: Department for Education. These figures are based on the Strengths and Difficulties Questionnaire. The SDQ should be completed for every child looked after for at least 12 months and aged 5 to 16 years-old as at the end of March. In 2015 there were 36,140 children in this cohort and 72% of these had an SDQ score returned.

^v Children from these minority groups in the general population (who are not looked after) are also over represented in the criminal justice system.