



Ending the criminalisation of children in residential care

Briefing one

Howard League for Penal Reform

Key points

- Looked-after children living in children's homes are being criminalised at excessively high rates compared to other children, including children in other types of care. Children aged 16 and 17 living in children's homes are at least 15 times more likely to be criminalised than other children of the same age
- Seventy-one per cent of children living in children's homes who were criminalised in 2015/16, for whom data is available, were found to have emotional and behavioural health that was of borderline or actual concern
- Seventy per cent of children who were criminalised in children's homes in the year to 31 March 2016 had been taken into care because of acute family stress, family dysfunction, parental illness/disability or absent parenting. An additional 14 per cent were taken into care primarily because of abuse or neglect
- The Howard League legal team has worked with many young people who have experienced the range and level of difficulties and disadvantage children living in children's homes commonly face. These include abusive and disruptive childhoods; lack of stability; and mental and emotional health problems
- The stories of children criminalised in residential care reveal that contact with the criminal justice system is often preceded by multiple experiences of rejection and the anger that arises from feelings of rejection. These typically include the events that lead to them coming into care and within the care system
- Frequent placement moves and other instabilities, such as changes of social worker and school, exacerbate feelings of rejection. Children's homes and the police need to be aware of the damage done by compounded rejection and to respond appropriately to behaviour arising from it. These children need acceptance, stability, help and support, not criminalisation
- Like any child, children who are criminalised whilst living in children's homes have great potential to live fulfilled and successful lives. Opportunities are being missed to recognise their potential and to provide the environment and support to enable them to thrive.

Overview

The Howard League is undertaking a two-year programme of work to end the criminalisation of children living in residential care. The project builds on from research we published in March 2016, which found that children living in children's homes were being criminalised at much higher rates than other children, including those in other types of care. This is the first in a series of briefings to be published alongside a programme of research and campaign work. We aim to clarify why so many children in children's homes are getting into trouble and to work with the police and children's homes to find examples of best practice to prevent their unnecessary criminalisation. The programme is being supported by an expert advisory board, details of which can be found at www.howardleague.org.

The facts

The state was corporate parent to 100,800 children between 1 April 2015 and 31 March 2016 (Department for Education 2016a, Table B1). The number of looked-after children has increased by more than 5 per cent since 2012 (Department for Education 2016b) and is now higher than at any time since 1985 (Zayed and Harker, 2015). The majority of children (74 per cent) are living with foster carers (Department for Education 2016b). The rest are looked after in children's homes, secure units, residential schools, hostels or they are living at home with their parents under the supervision of social services. On 31 March 2014, 5,220 children were living in children's homes (latest available figures covering only children's homes, Department for Education 2014).

Children in children's homes are being criminalised at much higher rates than other children, including children in other forms of care

Whilst it is the case that most children who spend time in children's homes do not get into trouble with the police, it is clear that children who are looked after in these settings are being criminalised at much higher rates than other children, including children in other types of care. There is also substantial evidence to suggest that residential care is the care setting that poses the greatest risk of increasing the likelihood of young people becoming involved in offending behaviour (Staines 2016).

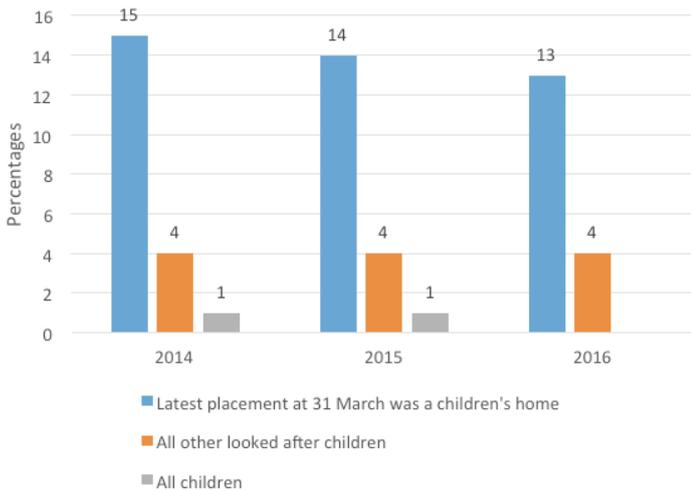
We do not know exactly how many children are being criminalised whilst they are in children's homes. Local authorities are only required to tell the government about offending by children who have been looked after continuously for at least 12 months. This means that data is not collected on the criminalisation of children whilst in children's homes if they are in care for less than 12 months. Given that over 50 per cent of children who left care during the year 2015/16 had been in care for under a year (in their latest period of care) it seems likely that these figures hugely under-represent the extent of the problem (Department for Education 2016a, Table D3).

Government data on apparent offending by children in care is generally published broken down by 'Looked-after children' (i.e. looked-after children in all types of placement) and 'All children' (i.e. all looked-after and all non-looked after children). This means that it is not possible to easily monitor comparisons in rates of criminalisation between different types of care placements. A more detailed breakdown was exceptionally published in 2014 and we reported on this in our 2016 publication, *Criminal Care* (The Howard League, 2016). We submitted a request to the Department for Education (DfE) under the Freedom of Information Act asking for a breakdown of more recent data so that we could compare offending rates between children in English children's homes and children in other types of care in England over the last three years. The results confirm that children in children's homes in England are still being criminalised at much higher rates than children in other types of care placements – as the charts on the next page show, the comparisons are even more stark when made against the offending rates for all children.

The children and young people helped by the Howard League legal team

The Howard League's legal team is the only frontline national legal team specialising in the legal rights and entitlements of children in or on the edge of custody. The team runs a free and confidential helpline, which is available to anyone in prison who is under the age of 21. The legal team represents children and young people to ensure they progress as quickly and successfully as possible through the

Percentage of children who have been subject to a final warning or reprimand during the year: comparison between children in children's homes, looked-after children in other placements types and all children



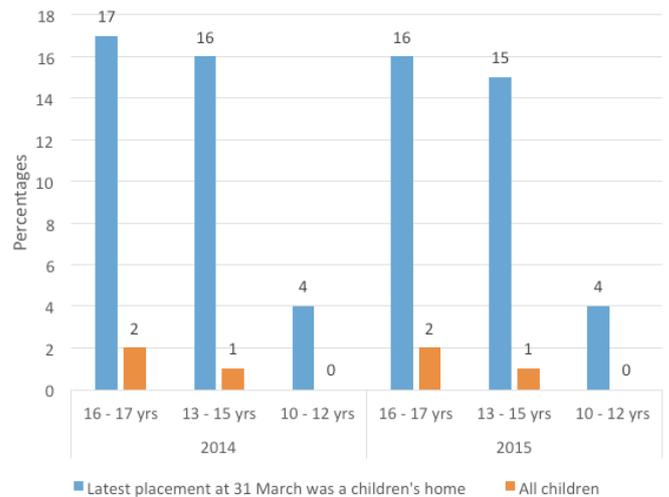
1. All figures have been rounded to the nearest 10.
2. Figures for All children for 2016 not yet available.
3. NB All children figures include children in children's homes.

system. The legal team challenges unfair and unlawful treatment of young people in prison, as well as the local authorities responsible for supporting them in the community when they no longer need to be in prison or can avoid being jailed. Many of the children it works with have been in care.

This briefing contains the stories of real young people who have been helped by the Howard League's specialist legal team, all of whom were criminalised whilst living in a children's home. The stories are based on anonymised material and pseudonyms are used throughout. The sources drawn upon, which include social work reports, police witness statements, Youth Offending Team reports and psychological assessments, document the severe problems and extreme vulnerabilities of children who get into trouble with the police whilst they are living in children's homes; they also provide evidence of young people's strengths and good qualities and of the advances and achievements they had made when they were being well-supported and provided with some stability.

The damage caused by multiple and frequent rejections is, in our experience, the single biggest factor affecting the young people we have worked with. Many of these young people suffered multiple rejections during their childhoods: they were rejected by

Percentage of children who have been subject to a final warning or reprimand during the year by age range: comparison between children in children's homes and all children



their families (or perceived this to be the case); they were rejected and excluded from school; and then, once they were in the care system, they faced a series of rejections through changes in care placements and social workers. Often the behaviour which leads to criminalisation arises from the young person's anger at being rejected and from their need to test the adults around them to see if they will be rejected once again. When this behaviour leads to criminalisation rather than support and acceptance, this, of course, compounds the child's sense of rejection and the damage to their mental health and emotional well-being.

Staff in children's homes and the police – and all the professionals who are supposed to be supporting and helping these young people – need to recognise this behaviour for what it is. They need to respond appropriately so that children are helped and supported rather than having their sense of rejection further compounded.

It is usual for children who come into contact with the youth justice system to be suffering from multiple disadvantage and difficulties. The stories of the young people helped by the Howard League offer a glimpse into the extent and range of the problems affecting children who are criminalised whilst living in children's homes.

Disrupted and abusive childhoods

The response to our Freedom of Information request (Department for Education, 2017a) revealed that 70 per cent of children who offended in children's homes in the year to 31 March 2016 had been taken into care because of acute family stress, family dysfunction, parental illness/disability or absent parenting. An additional 14 per cent were taken into care primarily because of abuse or neglect. Thirty-one per cent were recorded as having being taken into care because of socially unacceptable behaviour (NB. The figures provided by DfE do not add up to 100 per cent. The reason for this discrepancy is unknown but could involve more than one category of need being considered 'most applicable' to some children). All of the young people whose files we reviewed had experienced profoundly disrupted and traumatic childhoods. Jared's background is typical of the kinds of problems these children had suffered:

Jared's parents had mental health, drug and alcohol problems and Jared witnessed his father violently abusing his mother. As a young adult Jared said that he had few happy memories of growing up. He loved playing with his friends but he dreaded going back home because his mother was often drunk and she frightened him. He could never have his friends over for tea.

Lack of stability and frequent rejection

Instability is one of the factors most often linked to poor outcomes for children in care, affecting educational attainment, health and levels of criminalisation (Staines, 2016). In our experience, one of the most insidious problems arising from instability is the way in which it compounds children's feelings of rejection.

In April 2017, the Children's Commissioner launched a Stability Index to monitor the frequency of changes in placement, school and social worker experienced by children in care. The Commissioner's research showed that two in three children (69 per cent) in a data set of more than 7,000 looked after children experienced a change in at least one of these measures in 2015/16 (Children's Commissioner 2017, p.5). The report noted that children in care say that stability is the most important aspect of their experience of care (ibid, p. 3).

When children first come into care it is common for them to be placed with foster carers. If these placements break down and local authorities are unable to find another

foster carer able or willing to take the child, children are then placed in a children's home. All of the children helped by the Howard League and referred to in this briefing had experienced this pattern.

The most recently available figures show that nearly half the children in children's homes (48 per cent) have had four or more previous care placements (31 per cent have had six or more) as opposed to 26 per cent of children in foster care (Department for Education, 2014). The lack of placement stability was reflected in the stories of the young people in contact with the Howard League legal team, many of whom had experienced a very high number of placement moves. Many of the children spoke of how these moves compounded feelings of rejection and of feeling not wanted, and there were very clear links between these feelings and behaviour which led to their criminalisation. In each of their stories, there was evidence that professionals, including children's home staff, the police, YOT and social workers, had identified the effect rejection and other issues were having on the child but this awareness did not prevent the child from being criminalised.

Alex's story highlights many of the issues arising out of lack of stability and frequent rejection.

Alex came into care at the age of 13; in two years he was moved between 11 placements, the longest lasting four months. The placements were a mix of foster care and residential children's homes. They were in a variety of locations, some many miles from his home and outside his home local authority. When a placement couldn't be found, Alex was sometimes moved back in with his parents for short periods until they said they couldn't cope and asked for him to be taken back into local authority care.

Alex was diagnosed with several medical conditions which affected his behaviour and emotional well-being, including ADHD and Aspergers. A social worker reported that due to Alex's constant moves every six to eight weeks, he had been unable to access much-needed services. Another social worker concluded that Alex had not had the opportunity to address the issues in his life because of his many changes of accommodation.

Alex's education was badly affected by the constant moves, even though he was assessed by a professional as being very capable educationally. In one placement he successfully applied for an apprenticeship but this opportunity was lost when another placement broke down and he was moved on again.

The impact on Alex's emotional well-being was noted by professionals: one social worker characterised Alex as feeling uncared for and ascribed this to his apparent lack of empathy for others. The case notes suggest that Alex's feelings were accurate; in addition to the many moves, there are references to a care home manager telling the police that the home no longer wanted Alex to live there following damage to items valued at under £10. Alex was keenly aware that the manager wanted to get rid of him; he told the police that he had been in lots of different homes in the past and that he knew the manager didn't want him in this one.

Mental health, learning and communication difficulties

About 60 per cent of children in the youth justice system have significant speech, language or communication difficulties; around a quarter have a learning disability; and about one third of young people in custody have a mental health disorder, three times higher than the rate in the general population (Barnardos, 2017).

Seventy-one per cent of the children in children's homes on 31 March 2016 who had been convicted or subject to a final warning or reprimand during the year, for whom data is available, were found to have emotional and behavioural health that was of borderline or actual concern (data was collected for around 60 per cent of this cohort) (Department for Education, 2017b). This compares to 51 per cent for all children who were in care on 31 March 2016 (data collected for 75 per cent of children in this group, Department for Education, 2016a, Table I5a).

Many of the young people helped by the Howard League legal team suffer from multiple mental health and learning difficulties. All the children considered in

this briefing had a number of mental and emotional health problems and all displayed signs of emotional damage and difficulty in controlling their emotions. Their problems were well documented and children's homes were aware of them, yet still these children were criminalised.

Joanne provides a stark illustration of a child with serious emotional and mental health issues arising from trauma and abuse.

Joanne was probably trafficked and there were concerns throughout her childhood that she was the victim of child sexual exploitation. Professionals were aware that she had been exposed to various forms of abuse and that she had a very traumatic background. It was acknowledged that this would have severely impacted upon her thoughts, feelings and subsequent behaviour. One professional noted that there were hints and psychosomatic indicators such as frequent bed-wetting, volatility and extreme immaturity that would indicate that Joanne was deeply affected by what had happened to her. She was assessed as behaving more like a 7/8-year-old on occasion than a 16-year-old.

Unsurprisingly, Joanne responded angrily and aggressively when she was unhappy at the way she was being treated and could be violent, attacking staff and damaging children's homes' property. There were incidents when staff told her to go to bed, to get up early on a Sunday morning and when they tried to withhold her money and privileges, which resulted in the police being called and Joanne being charged with criminal damage and assault. It was well known to professionals that Joanne had suffered a very abusive past and that she might be the victim of ongoing child sexual exploitation, but this did not stop her from being criminalised. Every one of these incidents would have compounded Joanne's sense of rejection.

Criminalisation over minor incidents

In 2013, the House of Commons Justice Committee reported concerns that children's homes were calling the police for minor offending and trivial incidents which would never come to police attention if they took place in family homes (House of Commons Justice Committee, 2013). The

recently revised Sentencing Guidelines require magistrates and others involved in sentencing children to take into account the fact that 'In some instances a looked after child or young person (including those placed in foster homes and independent accommodation, as well as in care homes) may be before the court for a low level offence that the police would not have been involved in, if it had occurred in an ordinary family setting' (Sentencing Council 2017, Para. 1.16).

Some of the case notes for young people in contact with the Howard League legal team reviewed for this briefing contained instances of minor offences that would not have resulted in the police being called if the child were not living in a children's home. When homes deal with these minor incidents by calling the police and assisting in the criminalisation of the child rather than trying to understand the child and support them, they add to the child's feelings of rejection. This is compounded by feelings of unfairness and isolation. Professionals need to consider the impact their handling of these minor incidents will have on children and find alternative ways of dealing with them that do not involve criminalisation.

Rosie intervened in an argument between two other girls at a children's home she had recently been moved to against her wishes. The argument became heated and one of the girls accused Rosie of grabbing her hair and spitting at her. The home called the police and Rosie was later stopped in the street by the police and arrested for assault. After several months of uncertainty, the Crown Prosecution Service informed Rosie that she would not be prosecuted.

Sarah had a row with one of the care home workers; she threw a mug, which broke and a piece caught one of the carers on the jaw. There was no lasting mark. One of the carers later told the police that as soon as the mug was thrown one of the carers had said that they needed to call the police. Sarah was arrested at the children's home at around 1am and taken away in handcuffs.

Jenny and her friend were told by care workers that they must go to their own bedrooms – it was around 8.30pm. The girls were lying on the bed and did not respond. A male member of staff grabbed the pillow from under Jenny's head and threw it towards her bedroom door. One of the care workers leant on one of Jenny's possessions. She told him 'not to touch my things' but he refused to move, later telling the police that he didn't remove his hand because Jenny had spoken to him in a rude and disrespectful manner. He told Jenny that he had wanted to wake her up at which she became furious and hit him in the face. Jenny was woken again at midnight, this time by the police, and taken from the children's home in a caged transit van; she arrived at the police station at 1am and was charged with assault.

Missed opportunities

The anonymised data of children in contact with the Howard League that was considered for this briefing unsurprisingly concentrated on the problems facing the young people we have worked with. There were glimpses, however, of young people's good qualities and of their potential – of what they could have achieved with the right support. Ben provides a good example:

One professional spoke of how Ben was a very personable young man and a pleasure to work with and talk to. Another professional said that Ben was a lovely young man but that he had low self esteem. It was noted that Ben didn't seem to know where he was in life or where he was going and that he seemed to lack the confidence to take up opportunities. He was described as being very vulnerable and sweet when he allowed people to see that side of his personality.

Missing incidents

Children looked after in regulated children's homes are more likely to go missing than from any other type of placement (Department for Education, 2014). The extent of the problem is still unknown because of poor data recording and collection. HM Inspector of Constabulary (HMIC) asked all 43 police forces in England and Wales for data on missing children to inform its 2016 report, *Missing children who cares?*

The police response to missing and absent children. The report noted huge problems with data quality and collection and discrepancies between the data provided to it and to the National Crime Agency (HMIC 2016, pp. 24-25).

The Department for Education collected information for the first time in 2015 on children who were missing or away from their placement without authorisation in the year ending 31 March, for any length of time. Previously, information had only been collected on children who were missing or absent for at least 24 hours. The data is currently being published as ‘experimental statistics’, although the Department for Education says data collected in 2016 is more robust than data for the previous year (Department for Education, 2016c, p.11).

The table below presents data collected by the Department for Education from local authorities. It was obtained by us through a Freedom of Information request. It shows the high levels of missing or away from placement incidents of children who get into trouble with the police while living in children’s homes. In 2016, 66 per cent of these children had gone missing or away from their placement during the previous 12 months.

Experimental data, Department for Education

	2015	2016
Total number of children who have been convicted or subject to a final warning or reprimand during the year and whose latest placement at 31 March was a children’s home	580	580
Number missing from placement	330	380
Number away from placement	190	250
Missing incidents during the year	2,990	3,920
Away from placement without authorisation incidents during the year	1,140	1,340

1. Missing is defined as a looked after child who is not at their placement or a place they are expected to be (e.g. school) and their whereabouts is not known.

2. Away from placement without authorisation is defined as a looked after child whose whereabouts is known but who is not at their placement or place they are expected to be and the carer has concerns or the incident has been notified to the local authority or the police.

3. It is possible for children who were missing from placement to also be away without authorisation on another occasion during the year and they will be included in both categories, therefore the sum of both categories will be more than the number of children who have been convicted or subject to a final warning or reprimand during the year and whose latest placement at 31 March was children’s home.

There are concerns that children are being criminalised and exploited whilst missing from children’s homes, although it is currently impossible to monitor this because relevant data and information is not being collected. These concerns were in evidence for a number of the children whom we considered for this briefing.

A social worker noted that Michael’s future development was impaired by virtue of the fact that when he was missing he put his health at risk through poor diet and drug taking, exposure to violence, criminality and sexually transmitted infections. He was at risk of getting harmed by adults who sought to target him because he was vulnerable. There had been concerns around an adult threatening to inject Michael with heroin or crack cocaine if he did not commit offences for him. Michael had also reported that he had recently been threatened by an adult with a knife and a gun.

Lucy absconded on numerous occasions. It was suspected that she was involved in sexually exploitative relationships with adult males. She absconded in the middle of the night and returned with new clothes and money.

From a young age, there had been concerns that Daniel was being exploited by older, male gang members, including concerns that he may be the victim of child sexual exploitation. He was arrested on drugs-related charges on more than one occasion while missing from a

children's home. A pre-sentence report stated that Daniel was a complex and sad young man who had been deprived of the benefit of a safe and secure home environment. It was thought that due to this, from a very young age, Daniel had sought acceptance, protection and position amongst a pro-offending, older peer group. He was thought to be involved in negative and harmful activities; one professional noted that they found it difficult to draw a distinction between what he voluntarily engaged in and what he could be coerced into doing.

Conclusion and next steps

The experiences of a sample of young people supported by the Howard League legal team provides an insight into the range and complexity of the difficulties and needs young people living in children's homes are suffering from. It also offers a glimpse into the potential of these young people and of what they might have achieved if they had been given the stability and support they so desperately needed. Our legal work with young people often reveals the long-term damage caused by multiple experiences of rejection and of feeling unwanted as children. As these young people mature and, sometimes, only once they have been sucked deeper into the criminal justice system, when they come to unpick the root of their behavioural issues, the overwhelming impact of this rejection emerges.

Rejection by family and schools is made worse by multiple placement moves once they are in

care. When such highly vulnerable children are criminalised rather than helped and supported their feelings of rejection are compounded. They are failed by the state, their corporate parent, and by all the professionals and agencies who should be looking after their welfare.

Over the next 18 months we will be looking in greater depth at why children in residential care are being criminalised at such high rates. We will interview young people who are currently, or have recently, lived in a children's home in to ask them for their views on why children being looked after in children's homes get into trouble with the police and what can be done to prevent this from happening. As we seek to understand the problems these children face we will also be exploring examples of good practice within police forces and children's homes which are helping to prevent children from getting drawn into the criminal justice system. The results of this research will also be presented in future briefings.

About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison. We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change.

This report, including references, is available at:
www.howardleague.org

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