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Policy Briefing
Disrupting the Routes between
Care and Custody for Girls and Women

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Centre for
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Care-experienced Girls and Women and Criminal Justice

There is a stubborn over-representation of girls and women who have been in care as children in the youth and adult criminal justice systems in England and Wales. This policy briefing summarises the evidence on routes between care and custody for girls and women, and considers how policy can be strengthened to respond to ongoing challenges.

Background

The majority of children in care do not come into conflict with the law (Prison Reform Trust (PRT), 2016), but a minority continue to do so. Whilst only 1% of children are currently in care (Department for Education (DfE), 2020), recent research found 52% of children in custody were care-experienced (HM Inspectorate of Prisons, 2021). There are currently few girls in custody, yet estimates suggest that 31% of women in prison spent time in care as children (compared to 24% of men) (Ministry of Justice (MoJ), 2012).

However, the Laming Review highlighted the lack of research on the experiences of girls in care who are involved with youth justice and recommended a particular focus on their needs (PRT, 2016; Staines, 2016). Following the Review, the DfE, Home Office (HO) and MoJ published a national protocol on reducing the unnecessary criminalisation of looked after children and care leavers (DfE et al., 2018). Meanwhile, Ofsted (2018) introduced a new inspection framework calling for a reduction in formal police intervention in care settings. In addition, HM Prison & Probation Service (HMPPS, 2019) published a strategy for care-experienced people.

Key Points

- Girls and women who have been in care (e.g. foster care) are over-represented in the youth and criminal justice systems. They have distinct needs but have often been neglected in research, policy and practice.
- Over-criminalisation for minor offending in care settings, failure to adequately address trauma, unmet mental health needs and stigmatisation are key to understanding overlapping care and justice pathways for girls and women.
- Local protocols focused on reducing unnecessary criminalisation have the potential to improve outcomes, but few recognise the specific needs of girls and Black and minoritised children. There is also wide variation in scope and application of protocols and concerns about regular police contact in care homes.
- The impacts of maternal imprisonment on both mothers and their children, as well as low rates of violent offending in general for women and the commonality of short sentences, highlight the need for diversion from custody wherever possible. The prevalence of self-harm and suicide attempts amongst imprisoned women also requires urgent attention.
- Care-experienced girls and women who do enter custody risk being abandoned by their local authority. HMPPS leads who support care-experienced women in prison need to be provided with sufficient workload space and resources to carry out their roles.
- There are significant gaps in the quantitative evidence bases which if filled, could improve understanding of the issues facing care-experienced girls and women in justice systems.
- England and Wales has the lowest minimum age of criminal responsibility in Western Europe at just 10. Raising this age would prevent younger girls being criminalised in care and bring youth justice in line with international standards.

Causes of Over-representation

The Impact of Trauma

Early trauma is linked with both being taken into care and entering justice systems. This highlights the overlapping biographies of girls and women with care experience, and those with youth and criminal justice system contact (Fitzpatrick et al., 2019). Research suggests that girls in care may have experienced greater levels of adversity than boys, which can affect their subsequent justice system involvement (Lipscombe, 2006). Evidence further reveals that girls are more likely to have experienced sexual abuse and/or exploitation than boys (Shrifter, 2012) and that adversity may affect Black girls more than other minoritised groups (Zettler et al., 2018).

In the *Disrupting the Routes between Care and Custody* project, most care-experienced women interviewed in prison described backgrounds of abuse, serious violence and trauma, and had multiple experiences of victimisation throughout their lives (Fitzpatrick et al., forthcoming).

These themes were also reflected in interviews with care-experienced girls and young women in the community, albeit to a lesser extent. Some participants also reported experiences of Child Criminal Exploitation (CCE) or Child Sexual Exploitation (CSE). Numerous interviewees described how the care system had failed to address their trauma and, for many, had served to compound it through instability, inadequate care and further abuse. Coping strategies, such as 'kicking off' or running away, were often met with criminal justice responses.

For participants who were victims of exploitation, their victimisation was often minimised or ignored, which echoes findings from the Jay Review (Jay, 2014). Girls in care need a safe and supportive environment, where carers understand how trauma can manifest and respond appropriately.

A trauma-responsive care system which tailors responses to meet individual needs, and which can offer swift access to mental health support where required, is vital for girls (Fitzpatrick et al., 2022a).

Care Experience: Definitions and Reasons for Entry to Care

Who is a looked after child, care leaver or care-experienced person?

A child who has been in local authority care is known as a looked after child, or a child in care. Generally, children in care live in foster care, children's homes, or residential settings such as schools or secure units. However, some children in care live with a close friend or relative (kinship care). Those who have left care are referred to as care leavers, and if they meet certain limited criteria, may be entitled to support from their local authority up to age 25. The term care-experienced refers to someone who spent time in care as a child, regardless of their age.

Why do children become looked after?

In England, the vast majority of children enter care for reasons beyond their control. Almost two thirds go into care due to abuse or neglect (63%). A further 30% enter care due to family dysfunction or acute stress, absent parenting or low income while 6% enter care due to their own or a parent's disability. Just 1% of children enter care due to socially unacceptable behaviour.

Unmet Mental Health Needs

Over-representation in criminal justice settings may be associated with increased rates of mental ill health, which are common among girls in care, female young offender cohorts and adult women in custody (Bartlett & Hollins, 2018; Chitsabesan & Bailey, 2006; Postlethwait et al., 2010). Yet vulnerable care-experienced individuals in England are being failed by fragmented and underfunded mental health services (Innovation Unit, 2019). Recent High Court judgements have highlighted a serious lack of specialist placements for girls in care with acute mental health needs. A judgement by Mr Justice Poole in 2021 on the case of LT, a 12-year-old girl in care, noted “the consequences of the national shortage of secure and other suitable accommodation available for vulnerable children...caused avoidable harm to this child”¹.

Many care-experienced participants in the *Disrupting the Routes between Care and Custody* project disclosed mental health issues, and a lack of mental health support and specialist accommodation, which was echoed by the professionals interviewed. The prevalence of self-harm and suicide attempts among care-experienced women in prison demonstrated that, for some, this is a matter of life and death (see Fitzpatrick et al., 2022a). The government must ensure that there is enough specialist provision for girls in care with acute mental health needs and that women in prison have sufficient and timely access to professional support that continues when they leave.

Criminalisation in Care

There is much evidence to suggest that children in care can experience excessive levels of youth justice intervention that simply would not be the case in the family home (PRT, 2016). They continue to be criminalised at higher rates than children not in care (DfE, 2019; DfE, 2020), despite recent progress in reducing unnecessary criminalisation in care settings. Policymakers would benefit from an improved quantitative evidence base to better understand the extent of criminalisation in care. For example, rates of youth justice involvement for all children in care in England, including those looked after for less than 12 months, are currently unknown (Fitzpatrick et al., 2022b). The *Disrupting the Routes between Care and Custody* project found that girls continue to be drawn into the youth justice system for minor offences as there is ‘no room for teenage transgressions’ in some care placements. Such criminalisation was linked to trauma, unmet mental health needs, and experiences of victimisation including CSE, as well as negative gendered and racialised judgements which stigmatise girls (Fitzpatrick et al., 2022b). Those promoting a preventing criminalisation agenda take must take account of the potential for repeated challenging behaviour in care which may be related to unresolved trauma and a repeated lack of support for individual needs.

The Disrupting the Routes between Care and Custody Project

This Nuffield-Foundation funded project is the only piece of empirical research that specifically focuses on the link between care and criminal justice involvement for girls and women in England. The project began with an international literature review which explored messages from research and knowledge gaps (Fitzpatrick et al., 2019). Just 12 empirical studies were identified that had specifically explored this issue, none of which were completed in the UK. The literature review informed a short data scoping exercise which identified key contextual information that is and is not available on this topic.

The project prioritised the voices of girls and women with both care and criminal justice experience. It involved interviews with 37 care-experienced women across 3 prisons in England, and interviews with 17 care-experienced girls and young women across England who had also had youth justice involvement. Interviews were also undertaken with 40 professionals including front-line practitioners and senior policy leads from children’s services, police, youth justice, probation, prisons, and the judiciary. Also included was documentary analysis of 36 local authority protocols aimed at preventing the unnecessary criminalisation of children in care and/or supporting those in the youth justice system.

¹ [2021] EWHC 2593 (Fam)

Reducing Over-representation of Care-experienced Girls and Women in Justice Systems

The Potential of Local Protocols to Reduce Unnecessary Criminalisation

The government's cross-departmental National Protocol on Reducing Unnecessary Criminalisation of Looked-after Children and care leavers (DfE et al., 2018) called on local authorities to develop a local protocol, appropriate to their needs. Such protocols clearly have the potential to divert children away from formal youth justice contact.

However, an analysis of 36 local protocols shows few recognised the distinct needs of particular groups of children, including girls and Black and minoritised children (Fitzpatrick et al. 2022b).

There was also wide variation in scope and application of protocols, meaning protections for children are inconsistent across the country (cf Goldson & Briggs, 2021). Furthermore, 17 protocols stipulated a close working relationship between care placements and police, including regular police visits to children's homes to gather information.

Yet such police involvement could have unintended consequences, given the evidence that police contact – whether for welfare or justice reasons – can lead to more formal justice system contact (McAra & McVie, 2010).

There must be a renewed commitment to local protocols that contain appropriate provisions to address such concerns, with ongoing training for staff and police officers, a recognition of the needs of particular groups as well as the potentially life-long impacts of criminal records (Sands, 2016). The DfE, HO and MoJ should lead the way by placing a statutory duty on local authorities to prevent unnecessary criminalisation of children in care.

The Need to Prevent Intergenerational Harms

Stigma and negative judgements are common concerns for care-experienced mothers. These can be magnified for criminalised mothers (Baldwin, 2021). Care-experienced mothers in the *Disrupting the Routes between Care and Custody* project discussed the intergenerational impacts of both care and imprisonment and the difficulties of 'breaking the cycle' (Fitzpatrick et al., 2022b). An estimated 17,000 children are affected by maternal imprisonment each year (PRT, 2021), which can have untold impacts (Minson, 2020).

There is very limited knowledge of where the children of care-experienced women in prison go, including who children live with and if they enter care themselves. The impact of custodial sentences can be particularly problematic for care-experienced mothers without wider networks of family support upon which they and their children can depend. Yet there may be understandable fear amongst some imprisoned mothers of revealing information about their own children if they themselves have had a poor care experience (Fitzpatrick et al., forthcoming).

The wider evidence base on all imprisoned women shows that in 2020, 72% of women entered prison due to non-violent offences and 70% were sentenced to less than 12 months (PRT, 2021).

Custodial sentences are significantly more expensive than even the most high-quality community sentences (Farmer, 2019) and are less effective (MoJ, 2018). The MoJ's Female Offender Strategy committed to reducing the number of women in prison, pledging resources for greater use of community orders for women (MoJ, 2018). Clearly women should be diverted from custody wherever possible (Corston, 2007).

Supporting Care-experienced Girls and Women in Justice Systems

Care-experienced girls and women involved in justice systems risk being 'effectively abandoned' by their local authority (Coyne, 2015). Those transitioning from being in care to becoming a 'Care leaver' may have to navigate 'multiple cliff edges' which can further complicate justice involvement (Agenda & Alliance for Youth Justice, 2021:13). Extending the age at which meaningful leaving care support is available, would help to prevent compressed transitions to adulthood for young people in care (Fitzpatrick et al., 2022b). Recently, there has been increased recognition of the over-representation of those with care experience in prison and the need to support them, if they cannot be diverted from custody (HMPPS, 2019).

This has led HMPPS to appoint a National Care leaver Champion as well as Regional and Local leads for care-experienced people in prison. However, local leads must be given sufficient workload-space and resources in order to make a difference (Fitzpatrick et al., 2022b). Furthermore, there are ongoing challenges in identifying care-experienced women in prison which could be addressed by employing a less stigmatising 'opt out' question for those entering prison, instead of an 'opt in' one. Rather than enquiring 'who has spent time in the care system as a child?', the question could be re-framed as 'who has not?' (Fitzpatrick, 2020).

Raising the Minimum Age of Criminal Responsibility

A more radical shift in policy could significantly reduce the number of care-experienced girls entering the youth justice system. In England and Wales, the minimum age at which a person can be cautioned or convicted of an offence is set at just 10. Recently, Scotland has raised its minimum age of criminal responsibility (MACR) from 8 to 12² meaning that England and Wales now have the lowest MACR in Western Europe where most countries set their age between 14 and 16-years-old (Hazel, 2008).

The United Nations (2016: para 79) has called for the UK to bring youth justice fully in line with the United Nations Committee on Rights of the Child (UNCRC), including raising the low MACR to acceptable international standards. Raising the MACR in England and Wales would prevent the possibility of younger children being unnecessarily criminalised in care and reduce the number of girls transitioning into adulthood with criminal records, which can severely limit their prospects and potential.

Policy Priorities

- Ensure the availability of timely and meaningful mental health support where required
- Renew the commitment to local protocols aimed at keeping children in care out of the justice system
- Make the prevention of unnecessary criminalisation in care a statutory duty
- Divert care-experienced women from custody wherever possible
- Confront the intergenerational harms that imprisonment creates
- Improve support for care-experienced girls and women already involved with the Justice system.
- Extend the age at which meaningful leaving care support is available
- Raise the minimum age of criminal responsibility

² Age of Criminal Responsibility (Scotland) Act 2019

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