

# Reconsidering the Care-Crime Connection in a Climate of Crisis

By Claire Fitzpatrick

## Abstract

This article charts new ground by exploring the important increase in awareness surrounding the care-crime connection in recent years. The over-representation of care-experienced individuals in criminal justice settings has long been taken-for-granted. However, there has been a recent surge of interest in England and Wales in the need to avoid unnecessarily criminalising looked after children, and support those with care-experience in prison. Paradoxically, this increased awareness has occurred at the same time as a climate of crisis has threatened both the care system's and the prison system's capacity to function effectively. Despite the current climate, this article argues that things can be done to challenge the care-crime connection. Such strategies include: changing our language, connecting distinct policy priorities and moving beyond the limits of the law. Furthermore, the development of a life-course perspective could significantly improve understanding of the impact of care-experience over time. This article concludes by arguing that in the current climate, continued *diversionary push-back* from the youth justice system is vital. Crucially, this could help further reduce the number of First Time Entrants in the justice system, and ultimately offer the best prospects for reducing the number of children who move between care and custody.

## Keywords

Looked after children, care system, youth justice, prison system, crisis

## Part I. Introduction

The care-crime connection is a persistent phenomenon that involves the over-representation of those who have been in care (or 'looked after'<sup>1</sup>) in youth and criminal justice settings. Official data highlight that the principal reason for the majority of children entering the care system in England is abuse or neglect, which accounted for 63% of children who entered care in the year ending 31 March 2018; a mere one per cent of children enter care specifically because of their own behaviour.<sup>2</sup>

Whilst the majority of looked after children do not get in trouble with the police, a significant minority do so.

- Four per cent of looked after children aged 10 to 17 (1,510 children) who were looked after for at least 12 months were convicted or subject to a caution during the year ending 31 March 2018.
- According to the Department for Education, looked after children are around five times more likely to offend than all other children.<sup>3</sup>

However, official figures are limited and highly likely to be underestimates, because they are based only on those looked after continuously for 12 months or more. Thus, the true extent of the criminalisation of children in care is unknown.<sup>4</sup> In relation to adult prisoners, the Ministry of Justice found that 24% of males and 31% of females in custody had been in the care system as a child.<sup>5</sup>

---

<sup>1</sup> Looked after children include those under the age of 18 who are currently in the care of the local authority subject to a full care order under s 31 or looked after by voluntary agreement under s 20 of the Children Act 1989, including those in residential, foster and kinship care in England.

<sup>2</sup> Department for Education (DfE), *Children looked after in England (including adoption) year ending 31 March 2018*, (DfE, 2018), 5 & Table A1.

<sup>3</sup> *Ibid*, 14.

<sup>4</sup> Howard League for Penal Reform, *Programme to end the criminalisation of children in residential care: Overview paper*, (Howard League for Penal Reform, 2017).

<sup>5</sup> Ministry of Justice (MoJ), *Prisoners' childhood and family backgrounds*, (MoJ, 2012), 8.

However, these figures are also likely to be underestimates, not least due to the challenges in identifying prior care status amongst individuals in prison.<sup>6</sup>

Notwithstanding the limitations of official data, there has been a rapid increase in awareness of the care-crime connection in England and Wales in recent years. This is evidenced by the surge of interest in efforts to avoid unnecessarily criminalising children in care, and to improve support for those with care-experience in prison. However, this has occurred at the same time as a climate of crisis has threatened both the care system's and prison system's capacity to function effectively. This article argues that the current crisis in the two systems threatens to undermine the potential for progress that has been created. In this context, 'progress' refers to the opportunity to disrupt the long taken-for-granted link between experiences of care and later criminal justice system involvement. Moreover, the conditions of 'crisis' referred to relate to the current care system and prison system being overwhelmed by the numbers of individuals within these systems, which has resulted in already scarce resources (e.g. staff, appropriate placements) being stretched to the limit.

The wider social context of austerity, characterised by a retrenchment of welfare provision, early family support and youth/preventive services, partly explains the predictable increase in individuals being referred to state care and control systems. Poverty and inequality are increasingly faced by the poorest sections of society – from where children in care are most likely to come.<sup>7</sup> This paper intends to shape the academic debate through its central argument that even in a climate of crisis, there are things that can and should be done to make progress. There is a particular focus on making connections, including connections between childhood and adulthood in order to understand the

---

<sup>6</sup> C Fitzpatrick, P Williams, and D Coyne, 'Supporting looked after children and care leavers in the criminal justice system: Emergent themes and strategies for change' [2016] No 226 *The Prison Service Journal* 9.

<sup>7</sup> P Bywaters, G Brady, L Bunting, B Daniel, B Featherstone, C Jones, K Morris, J Scourfield, T Sparks and C Webb, 'Inequalities in English child protection practice under austerity: A universal challenge?' (2017) 23 *Child & Family Social Work* 53. See also C Grover, *Crime and Inequality* (Willan, 2008).

impact of care experience and justice-system contact across the life course. The central importance of a life-course approach is in its promotion of a long-term view, focusing on how people's behaviour and development may continue and change with age, as they go through various transitions and experiences.<sup>8</sup> By also applying this framework to systems, we can begin to make sense of some of the continuity and change within state care and control systems over time too, considering how this might impact on individuals.

The argument evolves by bridging insights from two distinct but overlapping disciplinary domains – Criminology and Social Work, where discussions about the care and criminal justice systems often remain separate, despite echoing similar themes. In Part II, 'Making Sense of the Care-Crime Connection Over Time', some brief contextual scene setting is provided, with a particular focus on conflicting perceptions of children and the disjointed nature of the systems that deal with them.

In Part III, 'The Climate of Crisis as a Significant Point in Time', a critical discussion of recent policy documents is used to highlight the increased awareness in the care-crime connection. This is important because it highlights that *now* is a very particular moment in time for attempts to disrupt the care-crime connection. Yet the opportunities that have been created by the increased focus on this social problem, risk being completely undermined by the wider conditions of crisis. The ground that has been gained in recent years, in terms of unprecedented policy and practice interest, must not be lost to a climate of crisis as this particular moment in time may not come round again.

So how might we emerge from a climate of crisis to challenge the care-crime connection in a positive way? This is explored in Part IV, 'Seizing the Day'. Challenging the stigmatising language that dominates discussions of the care-crime connection would be one initial important step forward. This

---

<sup>8</sup> C Carlsson and J Sarnecki, *An Introduction to Life-Course Criminology* (Sage, 2016).

could help us to produce a more positive overall narrative that feeds into a more hopeful practice and raises aspirations. Moreover, moving beyond the limits of the law in relation to the narrow parameters of who is entitled to support under leaving care legislation would be entirely compatible with a life-course perspective that focuses on understanding the impact of care experience over time. A focus on law's limitations also highlights the need for wider reform. Furthermore, starting from the assumption that all prisoners might feasibly have spent time in the care system, rather than focusing on trying to identify a special sub-group of 'care-leavers' offers one key way forward in which to ensure that 'care' issues become a mainstream priority for the first time in custodial settings.

## **Part II: Making Sense of the Care-Crime Connection Over Time**

This article seeks to make links between childhood and adulthood experiences in understanding the care-crime connection. The limitations of official offending rate data referred to above could serve to obscure the quantity of care-experienced individuals in prison as adults. However, making connections between children currently in care, and adults who were previously in care, encourages us to focus on outcomes across the life-course and consider a much-needed longer-term view. This longer-term view typically highlights varying levels of both continuity and change in individual pathways throughout life.<sup>9</sup> With respect to continuity, it can help bring into sharp focus the potentially long-lasting legacy of criminalisation in care. More positively, it can also highlight the possibilities for change, identifying potential turning points that can help redirect the course of life trajectories. In other words a life-course perspective provides a valuable wider theoretical frame of reference that starts from the assumption that outcomes in adulthood are not set in stone, regardless of early childhood experiences.

---

<sup>9</sup> RJ Sampson and JH Laub, *Crime in the Making: Pathways and Turning Points Through Life* (Harvard University Press, 1993).

In keeping with a perspective that focuses on development over time it is also instructive to note how competing perceptions of children, and the State systems that exist to deal with them, have also developed over time. The history of youth justice has been beset by conflict and ambivalence about how children in trouble should best be dealt with, with constructions of childhood itself contested and critiqued.<sup>10</sup> Case (2018) charts how the social construction of the ‘innocent-dangerous child dichotomy’ was seen particularly between the 1850s and 1900s in England.<sup>11</sup> Subsequently, ‘perceptions of children and their behaviours as problematic became difficult to reconcile with welfare-led views of the child as innocent and victimised by poverty – producing conflict and ambivalence in constructions of the child as victim and threat; as deprived and depraved; as in need of care and control’.<sup>12</sup> This deserving/undeserving dichotomy lingers on today,<sup>13</sup> and, in many ways, may explain society’s persistent failure adequately to address the care-crime connection over time. In essence, this connection takes us to the heart of a long-standing conflict over how we ought to treat children in trouble.

Interestingly, the conflict and lack of connection in competing perceptions of children is also reflected in our disjointed legal system.<sup>14</sup> As Sir James Munby highlights,<sup>15</sup> ‘...(C)ases involving children are spread across the jurisdictions. Cases where a child is to be put into the care of a local authority....are heard in the Family Court or the Family Division of the High Court. Criminal cases where a child is being prosecuted are heard in the Youth Court or the Crown Court....’<sup>16</sup> In Munby’s view, not only are the justice systems (family, youth and criminal) that deal with children disjointed, but so too are Whitehall

---

<sup>10</sup> See P Aries, *Centuries of Childhood: A Social History of Family Life* (Vintage, 1965) and A James, C Jenks and A Prout, *Theorizing Childhood* (Polity Press, 1998).

<sup>11</sup> S Case, *Youth Justice: A Critical Introduction* (Routledge, 2018), 25.

<sup>12</sup> *Ibid*, 45.

<sup>13</sup> B Goldson, ‘New Labour, Social Justice and Children: Political Calculation and the Deserving-Undeserving Schism’ (2002) 32 *British Journal of Social Work* 683.

<sup>14</sup> M King and C Piper, *How the Law Thinks about Children* (Taylor and Francis, 2<sup>nd</sup> edn, 1995).

<sup>15</sup> J Munby, *Children Across the Justice Systems*, The 2017 Parmoor Lecture to the Howard League for Penal Reform, (2017) <https://howardleague.org/wp-content/uploads/2017/10/CHILDREN-ACROSS-THE-JUSTICE-SYSTEMS.pdf> (accessed 29 April 2019)

<sup>16</sup> *Ibid*, 3.

and Ministerial policy portfolios in these areas.<sup>17</sup> The consequence is that practice then becomes disjointed too.

Indeed, evidence reveals a lack of awareness about care issues amongst criminal justice professionals,<sup>18</sup> in terms of understanding issues related to care experience, as well as the support available to those identified as ‘care leavers’. The complicated legislative framework around who is and is not entitled to support does not help this. However, those care leavers identified as ‘relevant’ or ‘former relevant’ young people under the restrictive definition of the Children (Leaving Care) Act 2000 are entitled to be kept in touch with by their local authorities, and have a personal advisor and a ‘pathway plan’ that is maintained and reviewed.<sup>19</sup> Access to appropriate leaving care support could offer a positive turning point to those leaving the care system, but may only be offered when criminal justice practitioners are aware of which individuals have a prior care status.

In seeking to move beyond disjointed practice, Munby asks: ‘Why, for example, could the Youth Court not be amalgamated in an expanded family court where the process would no longer be criminal and the emphasis could be on problem-solving in the true sense and...for the entire family, rather than on punishment, or so-called rehabilitation, for the child...’?<sup>20</sup> Although not without its challenges, the kind of systems change required for an amalgamated youth court offers potential for helping to increase understanding that children in need and children in trouble are often the same individuals,<sup>21</sup> who would benefit from individualised support. Whilst this has been demonstrated by decades of academic evidence,<sup>22</sup> a clearer articulation of this fact in policy and practice may help to move us

---

<sup>17</sup> It is noteworthy that Sir James Munby was the judge responsible for the ground-breaking judgement in 2002 that the Children Act 1989 must be applied to children in custody, [2002] EWHC 2497 (Admin).

<sup>18</sup> Innovation Unit, *Falling through the gaps: Fragmented and underfunded systems are failing care leavers who serve prison sentences, in custody and in the community* (Innovation Unit, 2019).

<sup>19</sup> Children (Leaving Care) Act 2000, s 3.

<sup>20</sup> Munby (n 15 above), 9.

<sup>21</sup> Goldson (n 13 above).

<sup>22</sup> Case (n 11 above).

beyond the historic discomfort in trying to make sense of the care-crime connection. A key question is whether the current climate is the moment in time to achieve this.

### **Part III: The Climate of Crisis as a Significant Point in Time**

#### **a) Increased awareness in a climate of crisis**

There has been a surge of interest in the care-crime connection recently, despite limited knowledge about care issues amongst some criminal justice practitioners,<sup>23</sup> and good practice being inconsistent and geographically variable. This increased awareness can be evidenced in a number of ways, including by a wide-ranging independent review on *Keeping Children in Care Out of Trouble*, set up by the Prison Reform Trust (PRT) and chaired by Lord Laming.<sup>24</sup> It can also be seen through the Howard League for Penal Reform's important programme of work to end the criminalisation of children in residential care,<sup>25</sup> which showed that police are called unnecessarily to deal with minor incidents that would be unlikely to lead to an official intervention for children living at home with their own parents. Thirdly, increased awareness of the over-representation of care leavers in prison has led Her Majesty's Prisons and Probation Services (HMPPS) to appoint a National Care Leaver Champion as well as Regional and Local Care-Leaver leads.<sup>26</sup>

The Laming Review identified the need for strong and determined national and local leadership to protect children in care from unnecessary contact with the youth justice system.<sup>27</sup> Meanwhile, the

---

<sup>23</sup> C Fitzpatrick and P Williams, 'The neglected needs of care leavers in the criminal justice system: Practitioners' perspectives and the persistence of problem (corporate) parenting' (2017) 17 *Criminology & Criminal Justice* 175.

<sup>24</sup> Prison Reform Trust Prison Reform Trust (PRT), *In Care, Out of Trouble: (The Laming Review)* (PRT, 2016).

<sup>25</sup> Howard League (n 4 above).

<sup>26</sup> HMPPS Guidance: Care Leavers in Prison and Probation, <https://www.gov.uk/guidance/care-leavers-in-prison-and-probation>, (HMPPS, 2019).

<sup>27</sup> Prison Reform Trust (n 24 above).



Howard League's report on *Criminal care* observed that 'Looked after children living in children's homes are being criminalised at excessively high rates compared to all other groups of children, including those in other types of care'.<sup>28</sup> Also highlighted was the lack of transparency in private children's homes (now accounting for around three quarters of the residential child care sector). This meant that homes were not accountable and bad practices, such as unnecessarily involving police to deal with minor incidents, were hidden. The report further noted that those resident in children's homes were almost six times as likely to be criminalised as looked after children in other forms of care, and nearly 20 times more likely to be criminalised than a non-looked after child of a similar age.<sup>29</sup> Sadly, this over-criminalisation of children in care is not confined to England and Wales and has been observed in other jurisdictions, including Scotland,<sup>30</sup> Republic of Ireland,<sup>31</sup> New Zealand<sup>32</sup> and Australia.<sup>33</sup>

Importantly, the Laming Review also highlighted the need for consistent, early support for children and families and more consistent support for those leaving care.<sup>34</sup> Whilst these are valuable recommendations, the reality is that early support is virtually non-existent in a climate of budget cuts and austerity, and improving leaving care support difficult to achieve. Perhaps most helpfully, the Review explored the existence of good practice in some parts of England and Wales in preventing children from having unnecessary criminal justice system involvement. This evidence was then used to question the often taken-for-granted link between care and criminal careers: 'The rate at which a

---

<sup>28</sup> Howard League for Penal Reform, *Criminal Care: Children's homes and criminalising children*, (Howard League for Penal Reform, 2016), 1.

<sup>29</sup> Howard League for Penal Reform, *Criminal Care: Children's homes and criminalising children* (Howard League for Penal Reform, 2016).

<sup>30</sup> Who Cares Scotland? (WCS), *Who Cares? Scotland's Report on the Criminalisation of Care Experienced People* (Who Cares? Scotland, 2018).

<sup>31</sup> N Carr and P Maycock, *Care and Justice: Children and Young People in Care and Contact with the Criminal Justice System* (Irish Penal Reform Trust, 2019).

<sup>32</sup> E Stanley, 'From Care to Custody: Trajectories of Children in Post-War New Zealand' (2017) 17 *Youth Justice Journal* 57.

<sup>33</sup> K McFarlane 'Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system' (2018) 51 *Australian and New Zealand Journal of Criminology* 412.

<sup>34</sup> Prison Reform Trust (n 24 above).

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'.<sup>35</sup>

Any attempt to reconsider the care-crime connection must involve challenging the assumed inevitability of that connection. A focus on good practice takes us some way to achieving this. Indeed, the work in Surrey and the often-cited 'South East Protocol' in England, aimed at diverting children in care away from the criminal justice system, have been critical in highlighting what progress is possible with strong leadership, a commitment to diversion, and the avoidance of formal contact with the justice system wherever possible.<sup>36</sup> Surrey successfully achieved year-on-year reductions in the numbers of children in care being involved with the youth justice system over a five year period from 2011.<sup>37</sup> This was achieved in part by the high level of support in the county for replacing the Youth Offending Team with a broader Youth Support Service, highlighting that progress can be made in disjointed systems by changing those systems.

More recently, the first '*National protocol on reducing unnecessary criminalisation of looked after children and care-leavers*' was published by the Department for Education, the Home Office and the Ministry of Justice<sup>38</sup> - further evidence of the increased awareness of this important issue, as well as of the cross-cutting government departmental interest in it. Yet at the same time as an increased awareness in the care-crime connection has occurred, both the care system and prison system have been described as being in a state of crisis, although the youth justice system represents something of an outlier here as will be further discussed. In other words, these positive increases in awareness

---

<sup>35</sup> Ibid (n 24), foreword to review summary.

<sup>36</sup> L McAra and S McVie, 'Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending' (2007) 4 *European Journal of Criminology* 315.

<sup>37</sup> Prison Reform Trust (n 24 above).

<sup>38</sup> Department for Education, Home Office and Ministry of Justice, *The National Protocol on Reducing Unnecessary Criminalisation of Looked after Children and Care Leavers*, (2018).

have occurred at a point in which the relevant systems are arguably *least well placed* to be in a position to take action.

## **b) Charting the Crisis in Care**

In 2016 the most senior judge of the family court service in England and Wales, Sir James Munby, issued an emergency statement highlighting that the family court service was facing ‘a clear and imminent crisis’ due to a sustained increase in the number of children in care and the number of applications for section 31 care orders under the Children Act 1989.<sup>39</sup> Two years later, and following Sir James Munby’s retirement, the new President of the Family Division of the High Court, Sir Andrew McFarlane stressed that the family justice system remained in crisis, fuelled by an ‘untenable’ workload created by a glut of applications to take vulnerable children into care.<sup>40</sup> In terms of the headline figures, at 31 March 2018:

- There were 75,420 looked after children in England, an increase of 4% on 2017, and an increase of 6,610 on 2014.
- 64 children per 10,000 of the population were looked after, up from 60 children per 10,000 in the previous two years.<sup>41</sup>

McFarlane’s comments came as he helped launch the Care Crisis Review, an independent study of the child welfare and family justice system in England and Wales.<sup>42</sup> This Review identified that the number of care order applications had reached record level in 2017, and that the number of looked

---

<sup>39</sup> *The Care Crisis Review: Options for Change*, (Family Rights Group, 2018), 4.

<sup>40</sup> A McFarlane, ‘A speech delivered at the launch of the Care Crisis Review’, 13 June 2018 [https://www.familylaw.co.uk/news\\_and\\_comment/sir-andrew-mcfarlane-delivers-speech-at-care-crisis-review-launch](https://www.familylaw.co.uk/news_and_comment/sir-andrew-mcfarlane-delivers-speech-at-care-crisis-review-launch) (accessed 10 June 2019).

<sup>41</sup> Department for Education (n 2 above), 4.

<sup>42</sup> *The Care Crisis Review* (n 39 above).

after children was at its highest since the implementation of the Children Act 1989.<sup>43</sup> Also highlighted was the impact of these trends on professionals.

‘Many professionals described the frustration they feel at working in a sector that is overstretched and overwhelmed and in which, too often, children and families do not get the direct help they need early enough to prevent difficulties escalating. There was a palpable sense of unease about how lack of resources, poverty and deprivation are making it harder for families and the system to cope. Many contributors...also expressed a strong sense of concern that a culture of blame, shame and fear has permeated the system, affecting those working in it as well as the children and families reliant upon it’.<sup>44</sup>

This culture of blame and shame has also been found in the education sector. In a survey of 447 teachers in England and Wales, 87% of respondents had heard at least one colleague express a negative generalisation about children in care, and 31% of respondents heard such views often.<sup>45</sup> There is a serious need to challenge the narrative of blame so often associated with children in care, particularly given the capacity of language to invoke moral judgements.<sup>46</sup>

### **c) Is the Youth Justice System an Outlier?**

Of crucial significance is that as the numbers of children in the child care system of England and Wales have been steadily rising in recent years, at the same time, there has been a dramatic fall in the numbers of children in the youth justice system of England and Wales. This is largely due to success in

---

<sup>43</sup> Ibid, 4.

<sup>44</sup> Ibid, 4.

<sup>45</sup> *Become and Voices from Care Cymru (2018) Teachers Who Care*, September 2018, 3.

<sup>46</sup> M. King, ‘Images of Children and Morality’ in M. King (ed) *Moral Agendas for Children’s Welfare* (Routledge, 1999).

diverting the number of First Time Entrants (FTEs) away from the justice system,<sup>47</sup> in a system that aims to see those in conflict with the law as ‘children first, offender second’.<sup>48</sup> In the year ending March 2018

- Around 26,700 children and young people received a police caution or conviction, a fall of 82% compared with 10 years ago, and a fall of six per cent compared with the previous year.<sup>49</sup>
- There were around 14,400 FTEs to the Youth Justice System, with a reduction of 86% over the last 10 years.<sup>50</sup>

In terms of youth custody, the number of children sentenced to immediate custody has fallen by 70% compared with 10 years ago. In the year ending March 2018, there was an average of just under 900 children in custody at any one time during the year.<sup>51</sup> The dramatic drops in the use of custody for children are undoubtedly to be welcomed, but they have changed the overall shape of the youth custody population. Charlie Taylor’s (2016) *Review of the Youth Justice System in England and Wales*<sup>52</sup> highlighted how certain groups including Black and Minority Ethnic (BAME) children and children who have been in care are particularly over-represented in custody.<sup>53</sup> In other words, these groups of children have not benefitted from recent shifts in youth justice policy and practice to the same extent as other children.<sup>54</sup> This is deeply problematic when we consider the safety of, and conditions

---

<sup>47</sup> T Bateman, A-M Day and J Pitts, *Looked after children and custody: a brief review of the relationship between care status and child incarceration and the implications for service provision* (University of Bedfordshire, Nuffield Foundation, 2018).

<sup>48</sup> Youth Justice Board (YJB), *Youth Justice Board for England and Wales Strategic Plan 2018-2021* (YJB, 2018).

<sup>49</sup> Youth Justice Board/Ministry of Justice, *Youth Justice Statistics 2017/18: England and Wales*, Statistics Bulletin, 31/1/2019, (Ministry of Justice, 2019), 2.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid, 36.

<sup>52</sup> C Taylor, *Review of the Youth Justice System in England and Wales*, Cm 9298 (2016).

<sup>53</sup> R Barn, M Feilzer and N Hardwick, ‘Black and Minority Ethnic Boys and Custody in England and Wales: Understanding Subjective Experiences through an Analysis of Official Data’ (2018) 7 *Social Sciences* 226.

<sup>54</sup> House of Commons Justice Committee, *Youth Justice: Seventh Report of Session 2012–13. Volume I: Report, together with formal minutes, oral and written evidence* (The Stationery Office, 2013).

experienced by, the children who continue to be locked up. As the Chief Inspector of Prisons noted in 2017:

‘By February this year we had reached the conclusion that there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people.... the speed of decline has been staggering....The reasons for this slump in standards are no doubt complex, but need to be understood and addressed as a matter of urgency...*The current state of affairs is dangerous, counterproductive and will inevitably end in tragedy unless urgent corrective action is taken*’.<sup>55</sup>

Of serious concern is that the disturbing conditions in youth custody highlighted by the Chief Inspector are particularly likely to be experienced by BAME children and those with care-experience.<sup>56</sup> The low age of criminal responsibility in England and Wales, 10, is highly problematic here too,<sup>57</sup> especially for those who are more visible to the police, more likely to come under official surveillance, and more likely to be perceived as ‘risky’ client groups.<sup>58</sup>

So, how is it that the numbers of children in one system (care) have steadily increased, whilst the numbers in another (youth justice) have dramatically dropped over broadly the same period of time? One reason might be that the systems are subject to very different dynamics, and operate independently from each other.<sup>59</sup> Nevertheless, there are vital questions to be asked in relation to whether the care system might learn from youth justice’s success in diverting the number of FTEs away from the system.

---

<sup>55</sup> Her Majesty’s Chief Inspector of Prisons, *Annual Report 2016–17*, (HMIP, 2017) 9 emphasis added.

<sup>56</sup> House of Commons Justice Committee (n 54 above).

<sup>57</sup> E Delmage, ‘The minimum age of criminal responsibility: A medico-legal perspective’ (2013) 13 *Youth Justice* 102.

<sup>58</sup> Fitzpatrick and Williams (n 23 above).

<sup>59</sup> Bateman, Day and Pitts (n 47 above ), 8.

Whilst the care system has the potential to provide a positive experience for the children within it,<sup>60</sup> this is less likely when resources are stretched and practitioners with heavy caseloads are overworked and overwhelmed. In short, when the system is bursting at the seams, individualised care is less likely. Moreover, finding the time and space to avoid the unnecessary criminalisation of children in care is likely to be deprioritised. Given that early justice-system contact increases the likelihood of later contact,<sup>61</sup> this could ultimately serve to increase the risk of care-experienced individuals ending up in the adult prison system.

#### **d) The Prison Crisis**

There has been a surge of interest in the over-representation of care leavers in prison in recent years, with a new annual Care Leavers conference organised for the first time by HMPPS in 2017, and their first strategy for care-experienced people in custody published in 2019. Unfortunately, identification of those with a prior care status in prisons remains a fundamental barrier to improving support, despite ongoing efforts to address this problem.<sup>62</sup> Consequently, there is still no accurate national picture of the numbers of individuals in prison who have previously been in care. One reason why this is problematic is because there may be individuals eligible for leaving care support from their local authority who are simply being missed and failing to receive help that they may desperately need.<sup>63</sup> Furthermore, attempts to provide support to those who have previously been in care risk being seriously undermined by current conditions in prison custody.

---

<sup>60</sup> C Taylor, *Young People in Care and Criminal Behaviour*, (Jessica Kingsley, 2006).

<sup>61</sup> McAra and McVie (n 36 above).

<sup>62</sup> HMPPS, *Strategy for Care Experienced People*, (HMPPS, 2019).

<sup>63</sup> *Ibid*, 58.

England and Wales has one of the highest imprisonment rates in Western Europe. Furthermore, the prison population has risen by 70% in the last 30 years (but fallen in the last two).<sup>64</sup> Such rises have had a direct impact on the problem of overcrowding. According to the Bromley Prison Briefings: ‘(O)vercrowding affects whether activities, staff and other resources are available to reduce risk of reoffending, as well as distance from families and other support networks. In 2017–18...nearly 20,700 people were held in overcrowded accommodation—almost a quarter of the prison population. The majority were doubling up in cells designed for one’.<sup>65</sup>

Overcrowding is also linked to increasing concerns about safety in prisons. ‘Safety in prisons has deteriorated rapidly during the last six years. People in prison, prisoners and staff, are less safe than they have been at any other point since records began, with more self-harm and assaults than ever before....Inspectors found that safety was not good enough in nearly two-thirds of male prisons (64%) they visited last year’.<sup>66</sup>

In the year ending September 2018, 325 people died in prison, and over a quarter of those deaths were self-inflicted.<sup>67</sup> Mental health concerns as well as substance misuse problems are extremely high amongst the prison population, raising serious questions about the appropriateness of a criminal justice response to these individuals, as opposed to a more health and welfare-focused one. Within the current prison context, characterised by overcrowding and alarming levels of self-harm and violence, the prison service itself acknowledges that it is struggling to ‘get the basics right’ in terms of safety and decency, for example. This is a key priority in the HMPPS business plan for 2018-19.<sup>68</sup> Yet,

---

<sup>64</sup> Prison Reform Trust, *Bromley Briefings Prison Factfile Autumn 2018*, (Prison Reform Trust, 2018), 10.

<sup>65</sup> *Ibid*, 16.

<sup>66</sup> *Ibid*, 12.

<sup>67</sup> *Ibid*, 12.

<sup>68</sup> HMPPS, *HM Prison and Probation Service Business Plan 2018-2019*, (HMPPS, 2018).

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/724911/HMPPS\\_Business\\_Plan\\_2018-19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724911/HMPPS_Business_Plan_2018-19.pdf) (Accessed 20 November 2018).



it is against this backdrop that an unprecedented awareness in the need to provide support to prisoners with care-experience has also taken place.

Clearly there is a danger that supporting those with care-experience in prison becomes a *sub*-priority or an additional, *specialist* objective layered on to more pressing mainstream concerns – which may then be inadvertently deprioritised by busy staff already stretched to the limit. Yet ‘care-leaver’ issues need to be reclassified as a fundamental part of the ‘improving decency and safety’ agenda<sup>69</sup> because these issues are exactly about ‘getting the basics right’. So how far this can be achieved in the current climate, and which strategies might actually make a difference?

#### **Part IV: Seizing the day: Proposed Strategies for Disrupting the Care-Crime Connection**

The following discussion outlines various strategies for moving forward, starting with those relevant to the care system, before considering those relevant to youth justice and the prison system. This structure therefore mirrors that of the earlier discussion, whilst also following the possible journey that individuals may take between state care and control systems – when appropriate support is absent. It begins with a focus on the crucial issue of language.

##### **a) Changing the Language Associated with Children in Care**

Whilst some progress has been made in recent years, there remains a serious need to challenge the narrative that often goes hand-in-hand with professional talk about care-experience. Even in the Laming Review, reference was made to the “profound deficiencies” in some individuals and the “serious failure” of their families.<sup>70</sup> However, nowhere in this review is such strong language used to describe the care or criminal justice systems, despite the profound deficiencies that exist within them.

---

<sup>69</sup> Ibid 3.

<sup>70</sup> Prison Reform Trust (n 24 above)

Without paying due attention to these, the danger is that we simply reproduce some of the negative risk and perceptions of riskiness so often associated with those with care experience.<sup>71</sup> A similar argument relates to other common refrains used by professionals which focus on individual deficiencies, and may invoke moral judgements.<sup>72</sup> For example, descriptions of individuals being ‘hard to reach’, ‘difficult to engage’ and ‘enormously complicated’ are often heard and found in official files that construct an individual’s ‘paper self’.<sup>73</sup> Yet a strong case can be made for turning some of this language on its head.<sup>74</sup>

To do so, we must recognise that in a context of austerity, early support services for individuals and families in need are often extremely ‘hard to reach’ too, if they even exist at all. This serves to fuel the care crisis. In this context, overworked practitioners with heavy case-loads, such as social workers, can be ‘difficult to engage’ for children in care. Meanwhile, the systems that individuals must navigate, particularly for those who cross-over within care and criminal justice, are undoubtedly ‘enormously complicated’. As Featherstone *et al* argue, there is a need to ‘rescue our thinking and practices from a seeming inability to see beyond superficial tropes such as “they are making risky choices or they have poor attachment patterns”’.<sup>75</sup> Such language simply serves to prioritise an individualised risk-focused practice culture which ‘reinforces rather than ameliorates the struggles families face’.<sup>76</sup>

The language used in legislation and policy is also questionable and telling.<sup>77</sup> The restrictive legal definitions of what constitutes a ‘care leaver’ in sections one and two of the Children (Leaving Care) Act 2000 encourage a focus on whether those previously deemed to be vulnerable are now ‘eligible’,

---

<sup>71</sup> Fitzpatrick and Williams (see n 23 above).

<sup>72</sup> M. King, ‘Images of Children and Morality’ in M. King (ed) *Moral Agendas for Children’s Welfare* (Routledge, 1999).

<sup>73</sup> K Ellis, ‘He’s got some nasty impression of me he has’: Listening to Children in the Secure Estate’ (2016) 46 *British Journal of Social Work*, 1553.

<sup>74</sup> B Featherstone, A Gupta, K Morris and S White *Protecting Children: A social model* (Policy Press, 2018).

<sup>75</sup> *Ibid*, 9.

<sup>76</sup> *Ibid*, 7.

<sup>77</sup> C Piper, ‘Who are these Youths? Language in the service of policy’ (2001) 1 *Youth Justice* 30.

‘relevant’ or ‘former relevant’ to policy and practice. This is hardly a means of encouraging practitioners to keep the human being in mind and also discourages policy-makers and practitioners from casting their gaze beyond early adulthood. From a life-course perspective, this is deeply problematic because it ignores individual development over time, and fails to see the connections between childhood and adulthood.

## **b) Moving Beyond the Limits of the Law**

In applying a life course perspective to those with care experience, appropriate support for independent living and making the transition from care to independence is absolutely key. The leaving care age is important to consider here, and this is set at 18 years in England and 21 in Scotland. Whilst those in foster placements have the option of ‘staying put’ arrangements up until the age of 21 if they wish,<sup>78</sup> and if their foster carer can manage on a reduced allowance, this option is not available to those in residential care – effectively creating a two-tier system that disadvantages those leaving care from children’s homes.<sup>79</sup> Either way, children in care continue to make a compressed and accelerated transition to independence in comparison to their peers in the general population, where the average age of leaving the parental home has been rising. Indeed, young adults (aged 20 to 34) in the UK are now more likely to be sharing a home with their parents than at any time since 1996.<sup>80</sup>

There have been some positive developments in relation to the provision of leaving care support. The Children (Leaving Care) Act 2000 was important in extending support to those eligible, up until the age of 21, including the offer of a Personal Advisor and a pathway plan under section three of the Act.

---

<sup>78</sup> HM Government, *“STAYING PUT” Arrangements for Care Leavers aged 18 and above to stay on with their former foster carers DfE, DWP and HMRC Guidance*, (HM Government, 2013).

<sup>79</sup> Although, ‘staying close’ arrangements have been piloted for those leaving residential care.

<sup>80</sup> Office for National Statistics, ‘Why are more young people living with their parents?’, (2016) <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/articles/whyaremoreyoungpeoplelivingwiththeirparents/2016-02-22> (accessed 5 May 2019).

Furthermore, section 3 of the Children and Social Work Act 2017 has introduced the right to advice and support, based on an assessment of individual needs, for all care leavers up to the age of 25, including those in custody. This is welcome but advice and support can only take individuals so far if they are struggling to find a roof over their heads, as well as the finances to survive on a day-to-day basis. Many of those leaving care will be estranged from their local authorities and so may not be willing to ask for support or advice, even in their early 20s.<sup>81</sup> Such willingness might come later, but the law does not allow for this.

Adopting a life-course approach here, with its emphasis on both continuity *and* change over time, would enable us to take a much longer-term view.<sup>82</sup> Applying this perspective to ‘care’ issues indicates that we need to move beyond the limits of the law, and the narrow definitions of who constitutes a ‘care leaver’ in legislation. Statutory support and advice ought to be available to all, not just those who fall into the limited legal categories of ‘eligible’ or ‘relevant’.

### **c) Illuminating the Long-term Consequences of Criminalisation**

A life-course approach is also vital in encouraging a focus on the damaging long-term consequences of criminalisation. Criminal records obtained in childhood remain for a long time,<sup>83</sup> and the consequences of having a record can also be long lasting - experienced by some as ‘a life sentence’.<sup>84</sup> Furthermore, England and Wales has one of the most punitive childhood criminal records systems when compared to 15 other jurisdictions.<sup>85</sup> This is because ‘unlike many jurisdictions, there is no

---

<sup>81</sup> Taylor (n 60 above).

<sup>82</sup> Sampson and Laub (n 9 above).

<sup>83</sup> The regime that sets out the disclosure of criminal records is underpinned by the Rehabilitation of Offenders Act (ROA) 1974, as amended in 2014.

<sup>84</sup> C Stacey, *A life sentence for young people A report into the impact of criminal records acquired in childhood and early adulthood*, (Unlock, 2018).

<sup>85</sup> C Sands, *Growing up, Moving on The International Treatment of Childhood Criminal Records*, (Standing Committee for Youth Justice, 2016).

means to “wipe” or expunge a criminal record acquired in childhood in England and Wales’.<sup>86</sup> Furthermore, the rules on disclosure are relatively unrestricted, with few ways to prevent disclosure of comparatively minor convictions and cautions.<sup>87</sup> Whilst cautions and convictions may become ‘spent’ after a “rehabilitation period” specified by the Rehabilitation of Offenders Act 1974 (ROA), the time period can vary greatly in length and some convictions are never ‘spent’.<sup>88</sup> When combined with the fact that England and Wales has one of the lowest minimum ages of criminal responsibility in Western Europe at 10 years, which flies in the face of the evidence on maturity and brain development,<sup>89</sup> this becomes particularly problematic from a life-course perspective. Indeed, the United Nations Committee on the Rights of the Child has urged countries to increase their minimum age of criminal responsibility to at least 14.<sup>90</sup> Not only can the children in England and Wales receive a formal criminal record at a much earlier age than their peers in other countries, but this contact may remain on their official records for a life-time. As Sands notes:

‘Records of police involvement with children are retained on government databases until that child’s 100<sup>th</sup> birthday. The types of records retained include records of cautions and convictions; they also, and this is less widely known, include records of more informal involvement, for example, a record of a call-out to a children’s home that the police didn’t take any action over.

---

The jurisdictions compared were: Australia (New South Wales), Canada, England and Wales, France, Germany, Italy, New Zealand, Northern Ireland, Poland, Republic of Ireland, Scotland, Spain, Sweden, USA (New Mexico, Ohio and Texas).

<sup>86</sup> Ibid, 5.

<sup>87</sup> Ibid, 5.

<sup>88</sup> Standing Committee for Youth Justice, *Growing up, Moving on A report on the childhood criminal records system in England and Wales*, (Standing Committee for Youth Justice, 2017). The ROA gives people the right not to disclose spent cautions and convictions. However, a list of “excepted professions” are exempt from the ROA – and entitled to know about all cautions and convictions, spent or unspent, because they require a Standard and Enhanced criminal records check.

<sup>89</sup> Delmage (n 57 above).

<sup>90</sup> United Nations Committee on the Rights of the Child, ‘*General Comment No. 24 (201x), replacing General Comment No. 10 (2007) Children’s rights in juvenile justice*’, (2018)

<https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf> (accessed 10 May 2019).

There is no provision for records of any childhood involvement with the police to be erased before the person's 100<sup>th</sup> birthday'.<sup>91</sup>

This evidence strongly reinforces the need to explore alternative methods of resolving conflict in care settings, avoiding unnecessary reliance on the police wherever possible. A commitment to diversion from formal justice-system contact could help to provide a positive turning point for children in care at risk of coming into conflict with the law, as systemic failings within our youth and criminal justice systems risk creating adults with life-long problems.

With prior contact with the justice system being predictive of future contact, our systems effectively recreate a perpetual group of 'usual suspects'.<sup>92</sup> Undoubtedly, our system needs reform, with the High Court ruling in 2018 in *R (QSA and others) v Secretary of State for the Home Department and Secretary of State for Justice* that our childhood criminal records disclosure scheme is unlawful.<sup>93</sup> It is therefore now critical that all those working with children in care are made aware that the consequences of calling the police for minor incidents that occur in a care setting, may follow individuals well into adult life. A focus on the impact of care-experience across the life-course could help to clearly illuminate this problem, and invigorate ongoing efforts to prevent vulnerable children from being unnecessarily criminalised in the first place. This would fit very well with the current focus on diversion in a youth justice system that aims to be increasingly 'child-first' in its outlook<sup>94</sup> and could lead to further progress. Indeed, continued *diversionary push-back* from youth justice might further reduce the number of FTEs in the youth justice system. Ultimately, this scenario offers the best prospects in the

---

<sup>91</sup> C Sands, 'A childhood criminal record is for life', Blog post for the Howard League for Penal Reform's Programme to End the Criminalisation of Children in Residential Care, (Howard League for Penal Reform, 2018). <https://howardleague.org/blog/a-childhood-criminal-record-is-for-life/> (accessed 20 November 2018).

<sup>92</sup> McAra and McVie (n 36 above).

<sup>93</sup> *R (QSA and others) v Secretary of State for the Home Department and Secretary of State for Justice* [2018] EWHC 407 (Admin).

<sup>94</sup> Youth Justice Board (n 48 above).

current climate for reducing the number of children who move between care and custody. Yet at the same time, we must also focus attention on improved support for those with care-experience already in custody.

#### **d) Asking a Different Question**

Accurately identifying individuals with a prior care status in prison settings remains highly problematic. An issue of ongoing debate is how far the thorny issue of identification might be improved in order to ensure that those entitled to support from their local authority actually receive it. This was a key focus for attention at the most recent HMPPS annual conference on care leavers in custody (October 2019). These are worthy discussions and raise important questions about how the 'care question' is best asked, as well as what is the most appropriate space, place and time in which to do this. However, we need to turn the overarching question on its head. An 'opt out' question rather than an 'opt in' one might well be a better way forward. Therefore, rather than enquiring 'who has spent time in the care system as a child?', the question would be re-framed as 'who has not?' Taking this alternative approach starts from the (defensible) assumption that care-experience is likely to be found amongst prison populations. Beginning from this alternative orientation point could help to break down some of the stigma associated with declaring care-system involvement. Furthermore, a pragmatic attempt to make best use of the care-agenda in prisons would be to offer support to all individuals who have been in care regardless of their age and whether they fit within the narrow confines of legislation.

Progress could also be made if staff training and awareness-raising in prisons are centred on the reasons why children may enter the care-system in the first place: because they are likely to be vulnerable and, possibly, victims of abuse or neglect.<sup>95</sup> In other words, the State has previously

---

<sup>95</sup> Fitzpatrick and Williams (n 23 above).

deemed these individuals to be in need of welfare, protection and support. Therefore, what better way to promote 'safety and decency' in prisons than by assuming that prior care-experience is likely, and consequently placing the welfare, protection and support-needs that many prisoners have centre stage?

This shift of focus could also help to justify the development of further support, such as the establishment of care-experienced peer-mentoring groups in every prison setting. The work of the Care Leavers' Association has been pioneering in this respect, and the value of 'experts by experience' and peer-mentoring is increasingly recognised,<sup>96</sup> although sufficient resources are required to support this. Similarly, the development of the 'Clear Approach' programme (an empowerment programme for those with care-experience), offers an opportunity to talk through experiences on a one-to-one basis, as well as in a group setting, if individuals wish, and learn about what support might be available on release. Existing initiatives need to be rolled out across the secure estate, alongside a continued focus on innovative approaches to offer further support.<sup>97</sup>

The key point is that starting from the assumption that all prisoners are likely to have spent time in the care system could help to ensure that training on care issues and care support actually becomes *embedded* into prison training and culture so that the current vision amongst strategic leads at the top of HMPPS does lead to sustainable action on the ground. *Sustainable* in this context means action that can continue even amidst staff changes and when new leaders come into post. That is the challenge currently facing HMPPS, and the current policy climate offers an opportunity to take this forward in a way that has not been possible before.

#### **e) Making Connections Between Current Prison Policy Priorities**

---

<sup>96</sup> Fitzpatrick, Williams and Coyne (n 6 above).

<sup>97</sup> Ibid.



A focus on care-experience also offers a compelling way of connecting two complementary prison policy priorities – the recent interest in prisoners’ families and the promotion of a rehabilitative culture. There has recently been increased interest in both the wider families of prisoners and the children of prisoners.<sup>98</sup> This is particularly so since the publication of The Farmer Review<sup>99</sup> – a government report on *The Importance of Strengthening Prisoners’ Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*. Noting that family relationships are the ‘golden thread’ to help reduce reoffending, Lord Farmer called for family work in prisons be mainstreamed: ‘Employment and education are repeatedly cited as mainstream rehabilitation activities in offender management that all prisoners are expected to undertake whilst, in stark contrast, work to maintain and improve family and other relational ties is rarely even mentioned’.<sup>100</sup>

Amongst other things, Lord Farmer recommended that each prison develops a ‘local family offer’ to ensure that effective family work is delivered within prison, and that Governors be held to account for positive family work outcomes. So what does the Farmer Review mean for those who have been in care? Surprisingly there is not much detail about ‘care-leavers’ within the report, although one recommendation is that personal officer training must include awareness of how to help those with care-experience. However, the Farmer Review could offer an important opportunity to think about *how* to connect the focus on supporting prisoners’ family relationships with the specific resettlement needs of those who have been in care, who may not have wider networks of familial support.

---

<sup>98</sup> S Minson, ‘Direct harms and social consequences: An analysis of the impact of maternal imprisonment on dependent children in England and Wales’, (2018) *Criminology & Criminal Justice*, Online First, <https://journals.sagepub.com/doi/abs/10.1177/1748895818794790> (accessed 4 May 2019).

<sup>99</sup> Lord Farmer, *The Importance of Strengthening Prisoners’ Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*. (The Farmer Review), (Ministry of Justice, 2017).

<sup>100</sup> Ibid, 5.

Alongside the growing policy interest in prisoners' families, is the current HMPPS concern with promoting a rehabilitative culture.<sup>101</sup> Mann and colleagues call for a focus on creating a culture across prisons that supports and reinforces opportunities for people to change their lives, and emphasise the key concept of 'hope': 'In a rehabilitative culture, focus is given to developing and maintaining a positive identity, developing positive relationships, to the future and one's potential and role within this. Relationships between prisoners and their families are another central component of a rehabilitative culture, as there is good evidence that such relationships....can make a difference for future outcomes and conduct in prison.'<sup>102</sup>

Underpinning the focus on promoting a rehabilitative culture is a desire to end the so-called 'revolving door' into prison which sees so many individuals return to the prison gates within a year of release. Nearly half of adults (48%) are reconvicted within one year of release. For those serving sentences of less than 12 months, this increases to 64%.<sup>103</sup> This may be a particular issue for imprisoned women, many of whom are serving short sentences for non-violent offences, but may lose their home and children on entry to prison.<sup>104</sup> Yet there is no national data collection on the number of care-experienced women in prison whose children go into care, which may serve to conceal a gendered intergenerational pathway.

The focus on rehabilitative culture should not be seen as a separate or alternative policy priority from the current focus on prisoners' families. In fact, alongside the emphasis on improving support to care-leavers, these are very much complementary policy agendas focused on similar issues – specifically the need to provide individuals with better support in prison and on release. A Ministry of Justice

---

<sup>101</sup> HMPPS, *HM Prison and Probation Service Business Plan 2017/18* (HMPPS, 2017).

<sup>102</sup> R Mann, F Fitzalan Howard and J Tew, 'What is a rehabilitative prison culture?', [2018] No. 235 *The Prison Service Journal* 3, 8.

<sup>103</sup> Prison Reform Trust (n 64 above), 48.

<sup>104</sup> *Ibid.*

study found that those who had been in care were both younger when first arrested, and also more likely to be reconvicted in the year after release from custody than those who had never been in care.<sup>105</sup> Given that those with care-experience are particularly likely to be reconvicted, they are a key population to target in promoting a rehabilitative culture in prisons. By making those with care-experience a policy priority, rather than a specialism or a supplementary issue to be aware of (for those who have received the training), real inroads might be made in attempts to provide support. This is true in relation to both the provision of wider family support and support for effective rehabilitation

#### **Part V: Conclusion: What Does the Future Hold?**

The over-representation of care-experienced individuals in criminal justice settings has been taken-for-granted for too long. However, a recent surge of interest in England and Wales in the need to avoid unnecessarily criminalising looked after children, and to support those with care-experience in prison, offers some hope for the future. Yet this increased awareness has occurred at the same time as a climate of crisis has threatened both the care system's and the prison system's capacity to function effectively. Despite the current climate, this article argues that things can and should be done right now to challenge the care-crime connection.

The strategies outlined above are a call to action for policy makers and practitioners working across distinct state care and control systems. Challenging the stigmatising language so often associated with children in care, moving beyond the limits of the law, and illuminating the long-term consequences of criminalisation, could help us to move beyond some of the current system-level failings. Addressing

---

<sup>105</sup> Ministry of Justice (n 5 above).

the unnecessary criminalisation of children currently in care *must* become a key focus of attention. However, equally important is that we do not forget about those who have already been criminalised. Thus, we also need to focus on the impact of care-experience on criminal justice system contact across the life-course, in order to ensure that older care-leavers are not abandoned. Such a life-course perspective is lacking in academic research and rarely visible in policy and practice.

Improving support for those with care-experience in prison is also vital, and connecting distinct prison policy priorities offers one key way forward in which to ensure 'care' issues become a mainstream priority for the first time within locked institutions. This is important because there are plenty of care-experienced individuals in custody in need of support right now, with no time to wait for the frustratingly slow wheels of policy reform. However, accurately identifying these individuals in the first place remains problematic. Yet asking a different question (inviting individuals to opt-out rather opt-in) offers one way to make further progress and ensure the vision of strategic policy leads is translated into action on the ground. Such a vision will effectively be meaningless if it does not lead to change in real people's lives.

In line with a life-course perspective that focuses on the possibilities for continuity and change over time it is also vital to consider what the long-term consequences of the current crises within care and criminal justice might be. Crucially, this article argues that continued diversion from formal youth justice system contact must be prioritised in recognition of the following. Firstly, the current crisis in the care system, with staff overwhelmed with work, and resources stretched to the limit, may make the criminalisation of children in care more rather than less likely. Secondly, the current prison crisis means that there are major challenges in ensuring that those with care-experience in custody are not abandoned by their local authorities. Yet the youth justice system could be an effective moderator if the successes of recent years in reducing the number of first time entrants into the system can be expanded and built upon. As the system that effectively sits within the middle of the care-custody

continuum (and although not without its own serious challenges), youth justice is arguably the most well-placed system to disrupt the pathways between care and custody. Its recent focus on viewing those in conflict with the law as ‘children first, offender second’<sup>106</sup> also suggests a move away from the historic discomfort over the the deserving/undeserving child dichotomy<sup>107</sup>.

Alongside diversionary push-back from youth justice, wider policy changes and systemic reform are also needed. Long-term investment in early family support, youth services and mental health support are all urgently required to create supportive networks that enable individuals to flourish in their own communities and reduce society’s reliance on heavy-end state interventions. Furthermore, addressing the impact of poverty and inequality, given their impact on both offending and admission to care,<sup>108</sup> is undoubtedly one of the major challenges in addressing the care-crime connection.

More specifically, increasing the minimum age of criminal responsibility in England and Wales to bring us more into line with our European neighbours would reinforce ongoing efforts to avoid children in care being unnecessarily criminalised. Furthermore, reforming our childhood criminal records system, so that the consequences of minor misdemeanours in childhood do not last a life-time<sup>109</sup> could provide further protection, ensuring that criminalisation in care does not leave a lasting legacy,. Moreover, increasing the leaving care age and the support available beyond early adulthood is necessary to ease the difficult transition from care to independence for all those in the care system. This would also support efforts at resettlement for those with care-experience already caught up in the justice system.

Understanding the impact of care-experience across the life-course is crucial because this experience does not simply disappear at age 18 or 21, even if the support offered by the state does. But, why

---

<sup>106</sup> Youth Justice Board (n 48 above).

<sup>107</sup> Goldson (n 13 above).

<sup>108</sup> See Bywaters *et al*, and Grover (n 7 above).

<sup>109</sup> Stacey (n 84 above).

confine ourselves to strategising for the future within the limits of the law and, specifically, the leaving care legislation with its age-limits for providing support? A life-course perspective entails a complete shift of focus on to the long-term impact of criminalisation in care. This could help underpin more specific work on the pathways that individuals may take between care and criminal justice systems over time. Importantly, it is could also focus attention on the opportunities to create more positive turning points and transitions in a hopeful and welcoming society.

### **Acknowledgements**

Thanks are due to XX, XX, XX, XX and XX for their very helpful comments on early drafts and revised versions of this paper, as well as to the anonymous reviewers for their valuable suggestions.