

## Children's residential care review

### Introduction

1. This review is “seeking views on the purpose and role of residential care for young children [sic], and what works best to improve outcomes”. There are over 8,000 children and young people looked after by local authorities and living in residential care. By law, residential care should have been chosen because it is the most appropriate placement available to meet the child's needs.<sup>1</sup> Local authorities are under a duty to safeguard and promote the welfare of the child, to give due consideration to the child's wishes and feelings<sup>2</sup> and to develop a detailed individual care plan which, among other matters, sets out the permanence plan for the child.<sup>3</sup> An extensive array of legal obligations and safeguards have evolved over the decades, which aim to ensure each child receives optimum care. Whilst acknowledging this positive picture, Article 39 believes children and young people would benefit greatly from the introduction of a statutory, overarching purpose of care,<sup>4</sup> emphasizing recovery from past harm and looked after children's entitlements to support and services that will help them to flourish. Our submission makes a number of additional recommendations concerned with the promotion and protection of children and young people's fundamental rights.

### Perceptions of looked after children and young people

2. The Government's press release announcing the review stated:

*“There are currently over 8,000 children and young people in children's homes up and down the country, with councils spending over £1 billion a year. Yet these vulnerable children are less likely to do well at school, more likely to be absent or excluded, and more likely to take part in risky behaviour than their classmates - in part because of the past neglect and abuse they have suffered, and at a great cost to the taxpayer.*

*The independent review - headed up by Sir Martin Narey, former Head of the Prison and Probation Services in England and Wales and CEO of children's charity Barnardo's - will look at which children should be in residential care, how it can be improved and how government can achieve the very best for every single child in their care.”<sup>5</sup>*

3. Article 39's Director supported children and young people's participation in Children's Homes Week, a national communication campaign run by the Department of Health in 1996. Its aim was to tackle public misconceptions about children in care. Its media briefing explained:

*"Children and young people in children's homes can be as successful as any other young people. Sometimes these successes involve overcoming severe disadvantages and require considerable assistance from others to achieve personal goals. Sometimes the successes are as special and as normal as anybody else's."*<sup>6</sup>

4. Children told the Office of Children's Rights Director that the two worst things about being in care (n=276) were 'being away from your family' (47% of respondents) and 'rules' (19%). Disabled children were much more likely than non-disabled children to cite missing family and friends as the worst aspect of being in care. More positively, 12 per cent of children said 'nothing' was the worst thing. When asked whether they had been treated differently because they were in care, 37 per cent of children (n=309) said they had been treated better than other children, and 34 per cent said they had been treated worse. The longer a child was in care, the more they felt different from other children. One child explained: 'you see groups of families and feel like I wish I could be with mine, you want to turn back time and relive your life and not be in care'. Nearly half of the surveyed children (n=229) said they thought the general public sees children in care as 'bad and uncontrollable' and another 23 per cent thought children in care are seen as 'troublemakers'.<sup>7</sup>
5. We urge the review to be very careful that it does not inadvertently misrepresent children and young people who live in children's homes as failing children who cost the taxpayer too much. The reality is that children and young people who live in children's homes have typically endured great loss, trauma and unequal life chances. Bravery, tenacity and care and compassion for others, among many other human qualities, are markers of success too, alongside educational achievements and staying out of trouble. A recently published literature review of 97 studies which sought the views of children and young people about being in care should be very useful to the Review: this found that children and young people living in residential care appeared to suffer the most prejudice and concluded "[e]mphasising positive attributes was one way of challenging the negative labelling and stigma."<sup>8</sup>

## **Resources**

6. We warmly welcome the review's aim to secure the best for every child. Such ambition demands honest exploration of whether the resources available to children's services, and to universal services like health, education and social security, are sufficient to

properly support children **and their families** – to prevent the need for care, and during and after the child’s time in care. One in every nine (13%) care leavers aged 19 lived with their parents or other relatives on 31 March 2015<sup>9</sup> - a stark reminder of the enduring importance of parents, siblings and other family members.

7. For those children and young people who are living in children’s homes, there are obvious resource questions associated with funding suitable placements (keeping siblings together whenever possible); funding and facilitating effective support and safeguarding through roles like social workers, independent reviewing officers and independent advocates; and meeting the financial and support costs of young people as they begin their adult lives.
8. Latest figures for local authority spending in England show expected expenditure on children’s residential care in 2015/16 to be £0.9 billion.<sup>10</sup> This is a large amount, though we are not aware of any research indicating this expenditure is begrudged by taxpayers. Moreover, many other forms of welfare provision for children are justifiably costly. For example:
  - a. A critical care paediatric bed costs the NHS around £2000 **per day**<sup>11</sup> (the **weekly** cost of a children’s home placement is around £3000<sup>12</sup>)
  - b. The NHS spends around £0.7 billion on children’s mental health services a year<sup>13</sup> (and this is widely recognized as being insufficient)
  - c. The pupil premium costs £2.5 billion a year<sup>14</sup>
  - d. Local authorities plan to spend £0.86 billion on Sure Start centres and early years provision in 2015/16<sup>15</sup> (actual expenditure on Sure Start centres in 2010/11 was £1.4 billion<sup>16</sup>).

## REVIEW QUESTIONS

***Types of residential care that are currently provided, in order to understand the full range of provision which is available and when and for which young people it is best used***

### **Child’s welfare versus punishment**

9. The call for evidence indicates that this review is considering children’s homes and other residential settings, including secure children’s homes, residential schools, secure training centres and young offender establishments.
10. The governing legal framework for the listed institutions is split between the Children Act 1989 and the Care Standards Act 2000 (and their regulations and statutory guidance) and the Prison Act 1952 (and corresponding statutory rules). Whilst the needs, backgrounds and characteristics of the children living in these settings are more

similar than different, the culture, ethos and safeguards of the institutions vary widely. Starting with the legislative framework, there is a gaping divide between institutions designed to look after children, and those designed to detain and punish them. There is a very long tradition of government working closely with social work and other professional groups, and children and young people's organisations, in developing law, policy and standards for looked after children and young people. Some illustrative examples of this long-term collaboration:

- a. Regulations set out the standards which children's homes, secure children's homes and residential special schools must follow, encompassing all aspects of children's needs and emphasizing their right to be respected and listened to. These standards apply to children's homes, secure children's homes and residential special schools. No equivalent statutory standards exist for young offender institutions and secure training centres.<sup>17</sup>
- b. Regulations require that the manager of, and staff working in, children's homes, secure children's homes and residential special schools have minimum level qualifications for working with children in residential settings.<sup>18</sup> One of the many requirements of the quality standards cited above is that managers "ensure that the home has sufficient staff to provide care for each child".<sup>19</sup> No such statutory requirements exist for young offender institutions and secure training centres.
- c. Regulations prevent children's homes, secure children's homes and residential special schools from restricting a child's contact with his or her parents, relatives or friends unless this is to promote or safeguard the child's welfare.<sup>20</sup> No such statutory safeguard exist for young offender institutions and secure training centres.
- d. Whilst all settings are required to have an internal complaints procedure, only children's homes, secure children's homes and residential special schools are required to make a written record of the child's complaint, the action taken and outcome.<sup>21</sup>
- e. Regulations require that staff working in children's homes, secure children's homes and residential special schools record every use of restraint within 24 hours, and an authorized person must speak with the child concerned within 48 hours. They also require the development of a behavior management policy which sets out "the measures of control, discipline and restraint which may be used in relation to children in the home".<sup>22</sup> Managers must prepare a detailed statement of purpose which sets out, among other things, the home's approach to restraint and how staff are trained and their competency assessed in using such restraint.<sup>23</sup> No such statutory safeguards exist for young offender institutions and secure training centres.

## Defending and strengthening safeguards

11. Placements arranged by local authorities for looked after children are governed by a statutory framework, which is exclusively about meeting the needs of the individual child. Children's wishes and feelings are central to assessing their needs. Despite this, independent advocacy services consistently report that **placement moves** are one of the main reasons, if not the main reason, for looked after children contacting them.<sup>24</sup> Independent advocacy services for looked after children originated in the late 1980s, following the discovery/admission of widespread abuse in children's homes: in the early years, the roles were called children's rights officers to clearly signal alliance with children.
12. The independent reviewing officer (IRO) role, established to ensure external scrutiny and challenge,<sup>25</sup> provides a crucial additional safeguarding mechanism for looked after children (including those remanded by the criminal courts). If a local authority materially breaches its duties to a looked after child, IROs are legally required to consider referring the case to the Children and Family Court Advisory and Support Service (CAFCASS).<sup>26</sup> CAFCASS has been legally empowered for over a decade to bring proceedings under the Human Rights Act 1998 and judicial review proceedings on behalf of looked after children, following referral by an IRO.<sup>27</sup> Despite this, CAFCASS reports receiving **just 10 referrals** from IROs by February 2015.<sup>28</sup>
13. A 2015 survey by the National Association of Independent Reviewing Officers found that 91% of its members believe their independence from local authorities should be strengthened (though 72% want to stay within local authority management).<sup>29</sup>
14. Many of the safeguards enshrined in law for children in residential care have evolved over the past 25 years in response to revelations of systemic abuse and mistreatment in these settings. Children, young people and adults with 'care' experience have played a leading and consistent role in the development of laws, policies, and procedures that put the child's needs and rights truly at the centre.<sup>30</sup> We hope this Review will vigorously defend these rights and safeguards.
15. The existence of roles like advocates and IROs, and legal obligations, do not guarantee a child's rights will be protected and promoted. We believe these safeguards should be subject to regular review and strengthening, to ensure they provide the most effective rights protection. Furthermore, they should apply equally to all children living in institutional settings, irrespective of the reasons they have been placed there.

## Children and young people's experiences of residential care

16. Moving to the qualitative experience of living in institutional settings, Ofsted recently published the results of its survey with children and young people living in children's homes (and foster care). Ofsted reports:
  - a. 66% of children living in children's homes feel safe all of the time; and 90% feel safe all or most of the time (n=1,471)
  - b. 75% of children living in children's homes say staff look after them well all of the time; and 94% say they are looked after well all or most of the time (n=1,354)
  - c. 59% of children living in children's homes say that staff always make changes to their care as a result of the child's views, or explain why such changes cannot happen; and 85% say this happens all or most of the time (n=1,400).<sup>31</sup>
  
17. Notwithstanding this encouraging snapshot, it would be a mistake to consider abuse in children's homes as occurring only in the past. Research for the NSPCC reports the rate of confirmed abuse and neglect *in care* as being 3.3 per 100 children in residential care in England.<sup>32</sup> To put this into context, for every 100 children in the general population, 0.42 were subject to child protection plans in March 2014.<sup>33</sup> Given the difficulties children face in reporting abuse in institutional settings especially, and the low proportion of allegations subsequently independently investigated, the rate of abuse in care is likely to be much higher than indicated by the NSPCC's research. Article 39 has collected data from local authorities in England on the number of abuse and neglect allegations concerning children in institutional settings, the action taken by local authorities and the outcomes. It is unlikely the research will be completed during the Review's time frame, though we would be happy to share some preliminary findings, if this would be helpful.
  
18. We recognise that this Review does not have the remit or the capacity to examine the mechanisms in place to identify abuse and neglect in care, and how local authorities (and others) respond to abuse allegations from children living in children's homes. However, we would ask that the Review scrutinises any proposals to alter the regulation and operation of residential care from the perspective of whether such changes will make it less or more difficult for children to seek help when they are abused or mistreated.

## Harms of child imprisonment

19. There is ever-growing evidence of the harms of child imprisonment, encompassing physical and mental violence, neglect and sexual abuse.<sup>34</sup> Even on their own terms, prisons do not 'work', since known reoffending continues to be very high. However, no level of success in reducing reoffending could justify the suffering that children endure

in prisons. Imprisonment can never be a 'best' option for children (as implied by this section head). The landmark Children's Safeguards Review, established by the Conservative Government in 1996, concluded that no child should ever be in prison.<sup>35</sup>

20. We urge the Review to take on the baton of the Children's Safeguards Review, reject imprisonment and propose a visionary and non-punitive way forward for all children who would benefit from living in a group setting. The superior model of secure care offered by secure children's homes should be acknowledged,<sup>36</sup> together with the importance of such provision being part of children's services and locally accountable.

### ***What works within residential care settings to improve outcomes for the young people placed in them***

#### **What children and young people value**

21. Ten years ago, the Blueprint Project published its recommendations for transforming the care system. Nearly 400 children and young people, aged between five and 25, contributed to its work. This authoritative body of work underlines the importance of listening to and respecting children; offering stable and loving relationships; valuing families and friendships; and nurturing self-esteem and academic and other achievement.<sup>37</sup> Some years before this innovative project, the Department of Health commissioned the UK-wide membership body Children's Rights Officers and Advocates to develop training on children's rights and participation in care. A wide consultation process was undertaken with children in care and care leavers, leading to very similar findings to the Blueprint Project.
22. A small qualitative study of 10 children's homes made a tentative conclusion that outcomes for children were better in smaller homes that did not admit children in an emergency and were led by well-qualified managers.<sup>38</sup> The higher level of professional qualifications and greater status enjoyed by residential workers in other European countries was observed during a pilot study that introduced trained pedagogues (the majority from Germany) into English children's homes.<sup>39</sup>
23. We welcome the Review's strong invitation to care experienced children, young people and adults to contribute their expertise. We urge the Review to integrate the outcomes valued by children and young people (which are not always the same as adults<sup>40</sup>) into its framework for assessing 'what works' in residential care.

***What improvements could be made to the way that residential care provision is commissioned, delivered, regulated and inspected to improve outcomes and value for money***

24. We are not aware of any systematic analysis, conducted nationally and over time, of the needs of children living in children's homes, the extent to which children's needs are met and gaps in provision. Such an exercise would be a precursor for developing regional, and perhaps even national, commissioning of specialised provision.

***Are there better alternatives for some of the children who are currently in residential care***

25. The care planning process should identify the best placement for individual children. Besides basic adoption data, we are not aware of any systematic analysis of care plans, conducted at a local, regional or national level, to estimate the number of children who are living in placements not considered to be in their best interests, and the reasons for this (financial, scarcity or unavailability of provision, drift, and so on).

***Any other issues which might contribute to better outcomes for children in care***

**Unequal 'Staying Put' arrangements**

26. The emotional, practical and financial support offered to care leavers is an essential part of improving residential care, because this significantly extends the period of time during which young people can recover from past trauma, abuse and neglect. It gives them stability and a sense of security.
27. The unequal 'Staying Put' arrangements for young people living in foster care and children's homes cannot be justified from the perspective of the needs and rights of these young people. We are aware that one of the explanations given by government for not extending Staying Put to those in children's homes is the safeguarding implications of homes looking after both children and adults. These challenges exist for foster carers too, perhaps at an increased level since children feature prominently in most families.

**Understanding the importance of sibling relationships**

28. Children and young people consistently ask that greater attention and value be given to their relationships with siblings. The process of entering and living in care, even for short periods of time, can destroy relationships with siblings and take away identity, shared memories, companionship and love – at a time when they are most needed. In 2007, the Children's Rights Director for England published the views of 433 children on improving care standards. "Care placements should be designed so that brothers and



sisters can stay together” was the fourth main recommendation from children.<sup>41</sup> In its last concluding observations to the UK, the UN Committee on the Rights of the Child recommended action to “facilitate the initiation of contact proceedings for all children separated from their parents and siblings, including those in long term residential care”.<sup>42</sup> A National Voice, the organisation run by and for young people in care, found that 83% of children and young people who do not live with their birth siblings would like to see more of them.<sup>43</sup>

## About Article 39

29. Article 39 is a new charity which promotes and protects the rights of children and young people living in state and privately-run institutions (children’s homes, boarding schools, residential special schools, mental health inpatient units, prisons and immigration and military detention). It takes its name from the part of the United Nations Convention on the Rights of the Child (CRC) that entitles children and young people who have been abused or neglected to recover in environments where their health, self-respect and dignity are nurtured. Article 39’s Director and Trustees have many decades’ worth of experience of working with (and for) children and young people in the care system. Our Patron is Sir William Utting, who conducted the Children’s Safeguards Review mentioned in paragraph 19. We would be happy to provide further assistance to the review, including by sharing preliminary findings of the data referred to in paragraph 17.

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<sup>1</sup> Section 22C, Children Act 1989.

<sup>2</sup> Section 22, Children Act 1989.

<sup>3</sup> Regulation 5, The Care Planning, Placement and Case Review (England) Regulations 2010.

<sup>4</sup> See Alliance for child-centred care (2015) A new vision.

<sup>5</sup> Department for Education, 28 October 2015: ‘Children’s residential care review to transform lives’.

<sup>6</sup> Children’s homes week, 3-9 June 1996, media information pack, dated May 1996.

<sup>7</sup> Office of the Children’s Rights Director (2009) Care and prejudice. A report of children’s experience by the Children’s Rights Director for England. Ofsted.

<sup>8</sup> Selwyn, J. (2015) Children and young people’s views on being in care. A literature review. Coram Voice.

<sup>9</sup> Department for Education (2015) Children looked after in England including adoption: 2014 to 2015.

Table F1: Care leavers aged 19, 20 and 21 years old by gender, activity and accommodation.

<sup>10</sup> Department for Education (2015) Planned expenditure by local authorities in England: 2015 to 2016. Table 1: Overview of planned expenditure by local authorities, 2014/15 and 2015/16.

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- <sup>11</sup> BBC news, 17 December 2012: 'Shortage of critical care paediatric beds, doctors warn'.
- <sup>12</sup> Department for Education (2014) Children's homes data pack.
- <sup>13</sup> NHS England (2015) Future in mind. Promoting, protecting and improving our children and young people's mental health and wellbeing.
- <sup>14</sup> National Audit Office (2015) Funding for disadvantaged pupils.
- <sup>15</sup> Department for Education (2015) Planned expenditure by local authorities in England: 2015 to 2016. Table 1: Overview of planned expenditure by local authorities, 2014/15 and 2015/16.
- <sup>16</sup> Department for Education (2012) Statistical release. Local authority and school expenditure on education, children's services and social care for 2010-11, including school revenue balances.
- <sup>17</sup> Regulations 6-14, The Children's Homes (England) Regulations 2015.
- <sup>18</sup> Regulations 28 and 32, The Children's Homes (England) Regulations 2015.
- <sup>19</sup> Regulation 13(2)(d), The Children's Homes (England) Regulations 2015.
- <sup>20</sup> Regulations 19 and 22, The Children's Homes (England) Regulations 2015.
- <sup>21</sup> Regulation 39, The Children's Homes (England) Regulations 2015.
- <sup>22</sup> Regulation 35, The Children's Homes (England) Regulations 2015.
- <sup>23</sup> Regulation 16 and Schedule 1, The Children's Homes (England) Regulations 2015.
- <sup>24</sup> Office of Children's Commissioner for England (2011) Where's my advocate? A scoping report on advocacy services for children and young people in England; National Children's Advocacy Consortium (2012) Listen to me. Coram Voice and NYAS; Wood, M. and Selwyn, J. (2013) The characteristics of young people using advocacy services. University of Bristol;
- <sup>25</sup> These roles, established by Section 118 of the Adoption and Children Act 2002, replaced starred milestones on care orders which were introduced by the Court of Appeal in 2001 and set aside by the House of Lords in 2002: [2002] UKHL 10.
- <sup>26</sup> Regulation 45(3), The Care Planning, Placement and Case Review (England) Regulations 2010.
- <sup>27</sup> The Children and Family Court Advisory and Support Service (Reviewed Case Referral) Regulations 2004 – came into effect on 27 September 2004.
- <sup>28</sup> [https://www.cafcass.gov.uk/media/241054/caf\\_15-19\\_iro\\_referrals.pdf](https://www.cafcass.gov.uk/media/241054/caf_15-19_iro_referrals.pdf)
- <sup>29</sup> Children and Young People Now magazine, 30 June 2015: 'IROs choose to remain based within councils'.
- <sup>30</sup> Willow, C. (1996) Children's rights and participation in residential care. National Children's Bureau; Stein, M. (2011) Care less lives. The story of the rights movement of young people in care. Catch 22.
- <sup>31</sup> Ofsted (2015) Children's social care questionnaires 2015: what children told us.
- <sup>32</sup> Biehal, N., Cusworth, L. & Wade, J. with Clarke, S. (2014) Keeping children safe: allegations concerning the abuse or neglect of children in care. Final report. NSPCC.
- <sup>33</sup> Department for Education (February 2015) Characteristics of children in need: 2013 to 2014. Table D1 gives the rate of children subject to child protection plans in England as 42.1 per 10,000.
- <sup>34</sup> See, for example, Coles, D and Goldson, B. (2005) In the care of the state? Child Deaths in Penal Custody in England and Wales. INQUEST; Willow, C. (2015) Children behind bars. Why the abuse of child imprisonment must end. Policy Press; Her Majesty's Inspectorate of Prisons (2015) Behaviour management and restraint of children in custody. A review of the early implementation of MMPR by HM Inspectorate of Prisons.
- <sup>35</sup> Utting, W. (1997) People like us: the report of the review of the safeguards for children living away from home. Department of Health/Stationery Office.
- <sup>36</sup> See Justice Studio (2014) "They helped me, they supported me." Achieving outcomes and value for money in secure children's homes. Secure Accommodation Network.
- <sup>37</sup> Voice (2005) Start with the child, stay with the child. A blueprint for a child-centred approach to children and young people in public care.
- <sup>38</sup> Berridge, D., Biehal, N. and Henry, L. (2012) Living in children's residential homes. Department for Education.
- <sup>39</sup> Berridge, D. and others (2010) Raising the bar? Evaluation of the social pedagogy pilot programme in residential children's homes. Department for Education.
- <sup>40</sup> Selwyn, J. (2015) Measuring well-being. A literature review. Coram Voice.
- <sup>41</sup> Morgan, R. (December 2007) Children on care standards. Children's views on national minimum standards for children's social care. A report by the Children's Rights Director for England. Ofsted
- <sup>42</sup> Committee on the Rights of the Child (3 October 2008). Forty-ninth session. Concluding observations United Kingdom of Great Britain and Northern Ireland
- 43 A National Voice (2007) Brothers and sisters.