

A Guide to Youth Justice in Scotland: policy, practice and legislation

Section 8: Residential Child Care

June 2021

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1. Introduction

On July 31, 2020, there were 14,458 looked after children in Scotland, with around 10% of these children cared for in residential child care (RCC) (Scottish Government, 2020). The number of looked after children has increased by 1% after seven consecutive years of decline. This section has been included in '[A Guide to Youth Justice in Scotland: policy, practice and legislation](#)' in order to provide information to those working with young people involved in or at risk of offending in RCC. This includes those working within residential establishments, social workers placing or supporting a young person in RCC and the wider team around the child. This section explores the role of RCC as a vital part of the continuum of care and provides an introduction to some of the key concepts and approaches in RCC. It also highlights the concerns regarding the criminalisation of looked after children, particularly those in RCC, and factors that have been identified which can support decision making towards the aim of reducing unnecessary police contact. Those reading this section should refer to the legislation and policy relating to looked after children (see [Section 1](#)); the specific statement of function and purpose that each residential unit is required to have and their local policies and procedures; and the findings and conclusions of the recent Independent Care Review (2020) which undertook a root and branch review of all aspects of the care system, including RCC.

Roles, responsibilities and children's rights

Any child in RCC will have various people involved in their life and care as part of the team around the child. It is crucial that everyone involved in the child's life understands their own roles and responsibilities and that of each other, with the Lead Professional having various defined responsibilities including:

- Ensuring that every child has a Child's Plan which is implemented, follows the child and is shared with the RCC on admission, regular reviews take place and the support described in the plan is provided and coordinated. This includes ongoing contact and communication with all partners of the plan; ensuring any other plans for the young person are informed by, and incorporated into, the Child's Plan; updating and sharing the plan after each review; and ensuring reviews are integrated as far as possible.
- Maintaining contact with and ensuring the child and their family understand what is happening at each point so that they can be involved in the decisions that affect them (as discussed further below).
- Promoting partnership working between agencies and with the child and family.
- Ensuring responsibilities are fulfilled (including timescales for reviews) as per the [Looked After Children \(Scotland\) Regulations 2009](#), [Children and Young People \(Scotland\) Act 2014](#) and [Children's Hearings \(Scotland\) Act 2011](#) (as applicable).

The Child's Plan should hold detailed assessment information and identify the outcomes that need to be met in order for the young person to attain the [Getting it Right for Every Child \(GIRFEC\) wellbeing indicators](#), which should be developed with the child and their family. It is important that these outcomes are communicated to, and reviewed with, the residential placement and discussions are held to consider how the placement (and other agencies) can support the achievement of the identified outcomes. The young person will not live in residential care forever, they may return to their families, to other care services, or live

in(ter)dependently and a clear plan to manage this transition needs to be developed (many of the considerations described in [Section 6](#) of this guidance will be relevant).

Corporate parenting:

“...refers to an organisation’s performance of actions necessary to uphold the rights and secure the wellbeing of a looked after child or care leaver, and through which their physical, emotional, spiritual, social and educational development is promoted” (Scottish Government, 2015:4).

Part 9 of the [Children and Young People \(Scotland\) Act 2014](#) places corporate parenting on a statutory footing and establishes a framework of duties and responsibilities for relevant public bodies, including local authorities, health boards, the Care Inspectorate, Police Scotland, and post-16 education bodies, requiring them to be proactive in their efforts to meet the needs of, and promote positive outcomes for, all looked after children, including those in RCC, and care leavers who were looked after on their 16th birthday (or subsequently), with these responsibilities applying until the care leaver reaches their 26th birthday (CELCIS, 2017). Every corporate parent is expected to fulfil corporate parenting duties in their own way, consistent with their own purpose and functions, which include:

- Being alert to matters which adversely affect the wellbeing of looked after children and care leavers;
- Assessing the needs of those children and young people for the services and support they provide;
- Promoting the interests of those children and young people;
- Seeking to provide opportunities which will promote the wellbeing of looked after children and care leavers;
- Taking action to help children and young people access such opportunities and make use of the services and support provided.

The kind of outcomes that corporate parenting should achieve are:

- Providing safe, secure, stable and nurturing homes for looked after children and care leavers;
- Enabling looked after children and care leavers to develop or maintain positive relationships with their family, friends, professionals and other trusted adults;
- Upholding and promoting children’s rights;
- Securing positive educational outcomes for looked after children and care leavers;
- Ensuring ‘care’ is an experience in which children are valued as individuals, and where support addresses their strengths as well as their needs;
- Ensuring physical or mental health concerns are identified early and addressed quickly;
- Increasing the number of care leavers in education, training and employment;
- Reducing the number of looked after children and care leavers who enter the youth and criminal justice systems (explored in more detail below) (Scottish Government, 2015).

All corporate parents must prepare, publish and review a corporate parenting plan and report on how they have delivered on this plan (CELCIS, 2017). The whole organisation is

responsible for fulfilling these duties and staff at all levels must understand these duties and be supported and enabled to fulfil them (Scottish Government, 2015). Corporate parenting responsibilities are underpinned by the UNCRC, rendering it important that these rights are understood by all corporate parents (Scottish Government, 2015).

The UNCRC (1990) specifies the rights of every child, including those involved in offending behaviour and children in care (for further information see [Section 11](#)). Children's rights are not optional, they apply to all children in all circumstances, but as outlined by Lightowler (2020) many children who are in conflict with the law in Scotland do not experience 'justice' in the true meaning of the word and too often their rights are not upheld. Although all of these rights and articles of the UNCRC are relevant for children in RCC, those warranting particular attention in practice include the rights of children to be raised within their family, unless this is not in the child's best interest, and for their parents to be provided with support to do so (Article 18); and the right to special protection and assistance for children who are deprived of their family environment or who cannot remain for their best interests (Article 20). Relevant to this is the requirement that services and supports are made available to fulfil children's rights to health and healthcare (Article 24); education (Article 28 and 29); leisure (Article 31); and to promote physical and psychological recovery and social reintegration of children who are the victim of neglect, exploitation, abuse, torture or any other form of cruel, inhumane or degrading treatment in an environment which fosters the health, self-respect and dignity of the child (Article 39). The views of the child should be respected, requiring that each child is supported to express such views and that these inform decision making (Article 12). In addition, every child has the right to maintain personal relations and direct contact with their family on a regular basis, except if it is contrary to the child's best interests, requiring that all involved with the child promote and support family contact as appropriate (Article 9).

2. The Role of Residential Child Care

RCC should be recognised as being an important, valued and integral part of children's services, that can offer the best possible care and protection for those children and young people who need intensive care and support, whatever their age and needs. Residential childcare provision is designed to offer a safe and nurturing home life for children to grow and develop (Care Inspectorate, 2019b). A wide range of RCC provision is available in Scotland to looked after and accommodated children and young people on a full-time basis or as part of respite and crisis care, in urban and rural settings, and across the voluntary, private sector and statutory sectors (Care Inspectorate, 2019b).

Generally speaking there are three types of RCC provision: children's houses/units; residential schools; and secure units. Children's houses provide accommodation and support for children, usually in small units (Care Inspectorate, 2019b). These establishments differ from residential schools, where education is also provided on site. It should be noted, as detailed above that education is a right for all children and under the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#) all looked after children are automatically deemed to have additional support needs, unless the education authority has assessed the child as not needing additional support to benefit from school education. Most children's houses and residential schools are run by local authorities, although there has been an increase in the number of smaller private children's houses located in rural parts of Scotland (Care Inspectorate, 2019b).

Secure care is the most intensive and restrictive form of alternative care in Scotland (Gough, 2016), which can currently provide care, accommodation and education for 84 children aged 10-17 through four independent charitable services and Edinburgh City Council (see Youth and Criminal Justice in Scotland: the young person's journey). There are various routes to secure care (Nolan, 2019a) including via a secure accommodation authorisation as part of a relevant order being made under the [Children's Hearings \(Scotland\) Act 2011](#) and implemented by the Chief Social Work Officer (CSWO); in specific circumstances the use of emergency powers of the CSWO; police powers; and having been sentenced or remanded by the court. Most RCC services and all secure care providers have in place an outcome framework to support the identification and achievement of outcomes for young people in their care.

The Secure Care National Project has presented a number of key messages, calls for action and recommendations, many of which have been incorporated into the [Secure Care Pathway and Standards Scotland](#). The Secure Care Pathway and Standards Scotland were created to improve the experiences of children and young people who are in, or on the edges of, secure care, leading to better and brighter outcomes. They set out what all children in or on the edges of secure care in Scotland should expect and provide a framework for ensuring the rights of children and young people are respected and outcomes are improved for those who are experiencing extreme vulnerabilities, needs and risks in their lives. The Pathway and Standards establish a coherent set of expectations across the continuum of intensive supports, following a child's potential journey before, during and after a stay in secure care.

RCC services are inspected by the [Care Inspectorate](#) on an annual basis (and more often if assessed as necessary), taking into account the [health and social care standards](#) and utilising the quality frameworks for care homes for children and young people and school care accommodation (Care Inspectorate, 2019a). Residential schools and secure care centres are also inspected by [Education Scotland](#) and there have been joint inspections of secure care by the Care Inspectorate and the [Mental Welfare Commission](#). No two services are the same, so published inspection reports can provide a helpful reference point.

RCC has been the subject of various inquiries and investigations into concerns about the role of RCC and abuse in care (the [Scottish Child Abuse Inquiry](#) is ongoing) with this form of care often being perceived as the 'last resort' for children whom other placements have not worked out for and/or as the 'safety net' for the rest of the child care system (Scottish Institute for Residential Child Care (SIRCC), 2009; Skinner, 1992). However, numerous national enquires have reached the conclusion that RCC is a "positive choice" and the right option for some children and young people (Independent Care Review, 2020; Kendrick, 2013). The critical factor is the provision of the highest standard of parenting, care and nurturing from staff to the children in their care, within a homely environment, who can provide quality, stable and persistent caring relationships (Kendrick, 2013). Key to achieving this is the culture of the establishment; values that uphold children's rights and are therapeutic; good quality planning, for individual children and the services as a whole (including regarding placement decisions); placement stability; non-stigmatising and child-informed rules; and appropriate staffing arrangements, stable staff groups and good support to staff (Care Inspectorate, 2019b; Kendrick, 2013; The Howard League for Penal Reform, 2018; Together Scotland, 2019). A number of the key components and approaches in residential childcare are explored further below.

3. Key Concepts and Approaches

Relationship-based practice and the group living environment

Relationships as a therapeutic process and the basis for overcoming trauma is a well-defined concept in child care, with reciprocal, consistent, sustained, stable, nurturing and interdependent relationships recognised to be the foundation for all interactions, golden thread of good practice and critical if positive outcomes are to be achieved for young people (Independent Care Review, 2020; Scottish Care Leavers Covenant, 2015; Youth Justice Improvement Board, 2019). The presence of at least one trusting relationship has also been identified as the basis and essential to enable other aspects of hope to emerge, as well as for children to feel emotionally safe and cared for (Miller & Baxter, 2019). In RCC young people are expected to manage multiple relationships by virtue of the group living environment, including with unrelated peers, care staff (one or more of whom will normally be allocated as a keyworker for the child), education and other support staff, and ancillary staff (Anglin, 2002). What is unique to RCC is the intensity, and sometimes the intimacy, of each of these relationships related to the length and quality of time young people will spend with these adults and peers, resulting in relationships that can become kin-like (Kohlstaedt, 2010):

“Contemporary residential child care does not pretend that it is a ‘family’ and full recognition is always given to children’s heritage and birth family, yet care is intended to be ‘family-like’ in the sense that it aims to provide children with a secure, nurturing and stimulating environment where they experience warm, authentic care relationships with residential workers. Interestingly, some children report that their residential experience has been a family one, or “it feels like a family”” (Happer, McCreadie, & Aldgate, 2006:11).

It is crucial that these relationships are considered in making placement decisions, with the detrimental impact of placement instability and disruption on children well recognised; young people’s previous experiences of relationships and their impact are understood; the importance of and, benefits provided by, such relationships is recognised, alongside any risk management concerns; relationship-based practice is prioritised; and that opportunities are made available to support the sustaining of relationships beyond any placement (Fitzpatrick, Hunter, Staines, & Shaw, 2019; Furnivall, 2011; Hayden, 2010; Scottish Care Leavers Covenant, 2015).

The Independent Care Review & The Promise

Following the conclusion of the Independent Care Review in 2020, [The Promise](#) implementation body was set up to drive forward the changes outlined and mandated within the Independent Care Review’s final report (also named ‘[the promise](#)’). With an expected lifespan of ten years, The Promise aims to support various actors across Scotland to promote practice, policy and culture in order that Scotland’s children and young people grow up in a country that is loving, safe and respectful, and which allows them to realise their full potential.

The Promise states that Residential Homes and Schools can be the right place for a children or young people, specifically those who would find the intensity of family settings

overwhelming and prefer residential care for this reason as it can put fewer demands on them.

It further states that residential settings must operate with a cohesive set of values that uphold the rights of the children they are caring for. Those values must be therapeutic, recognising that children require thoughtful, supportive relationships as a basis on which to heal and develop as young adults. The Promise sets out several examples of this including:

- The needs of the children living in a residential home at the time must inform any rules as opposed to a blanket set of instructions and restrictions.
- Recognising that children and young people may have supportive, kind relationships with sessional staff as well as core staff, the residential provider must be supported to find the right balance between having consistent core staff along with the flexibility of additional support that works for the children and young people.
- Young people who leave residential care may wish to maintain relationships with workers and this must be supported and given time. Blanket policies that prevent the maintenance of these relationships must be removed.
- Staff must be recruited based on their values rather than educational levels.
- Children must not be further stigmatised, and any rules that do so must end. For example, staff should be allowed to use their own cars to take children to school, rather than relying on taxis, this would allow the opportunity for supportive relationships to develop whilst driving a child or young person to school or college.
- Residential Care settings must be supported and resourced to keep places open for young people in line with continuing care legislation. Scotland must ensure that this is not ended when young people do not want to and are not ready to leave.
- The Inspection of residential settings must focus on the children's experience of the relationships. Inspection must be led primarily by what those who live in residential homes say and how they feel they are being cared for

Life space intervention

A further unique component of the RCC environment is that the life space of the young person, where they eat, sleep, relax, express emotions, have fun, test boundaries and learn, is also where RCC staff are based and conduct most of their work with young people (Whittaker, 1981). Life space intervention sees the group living environment as providing a context for opportunity led work by actively and thoughtfully engaging with children and young people, which is distinguished from planned or structured interventions, for example as is typical in social work practice (Mark Smith, 2009; Ward, 2002). Such use of daily life and routine events requires an understanding of the importance of staff being able to develop and maintain positive relationships, noticing behaviours, understanding the context of these behaviours by making meaning and using insight and self-awareness in deciding the best way to intervene (Garfat, 2002). Of equal importance is the need for self-reflection to ensure that staff learn from the intervention experience, their role within this and are able

to use what is learned to apply to future situations (Anglin, 2002; M Smith, 2005). The conscious use of everyday events for therapeutic purposes is of course not new, but arguably, alongside relationships, the potential and ability to consciously harness the everyday care and experiences to enhance development and promote healing is one of the most fundamental and powerful things that RCC can uniquely provide (Steckley, 2016).

The therapeutic role of RCC

Children and young people in residential care have often experienced adversity, trauma, placement instability and breakdown, and loss (Gough, 2016). As Steckley (2018, p. 1651) Steckley (2018: 1651) states: "Fear, rage, shame and grief [that accompanies not being able to live with their families of origin] can feature in children's daily experiences, and intense or even extreme expressions of emotion can be commonplace in some residential child-care environments. Emotions can also be deeply repressed".

In dealing with such emotions, and as a means of surviving and having their needs met in the face of the adversity and trauma they have experienced, many young people in RCC will have developed strategies or behaviours. These strategies or behaviours, which should be framed as "pain-based" or "distress" behaviours, can be difficult for the team around the child to witness, support children through and manage, particularly for RCC workers who will be providing the day-to-day care for these children (Anglin, 2002; Gough, 2016). Such behaviours can include:

- Violence and aggression
- Problematic drug and alcohol use
- Self-harming (further information on mental health can be found in [Section 10](#))
- Absconding
- Offending
- Withdrawal
- "Disgust" behaviours (such as spitting, smearing, urinating, or poor self-care)
- Frequent and unsubstantiated complaints against staff

It is crucial that those working with children in residential care can help them to understand and make sense of their previous experiences; recognise and respond to the impact such experiences may have had on their day-to-day functioning, behaviour and wellbeing; support young people to regain or develop a sense of self-worth, self-efficacy and hope for the future; and develop the skills to negotiate and maintain interpersonal relationships and those necessary for future roles and responsibilities (Gough, 2016). It is acknowledged that this will often require going beyond the provision of basic care, to provide that which is both reparative of the previous harms caused and promotes personal growth, development and wellbeing, often termed therapeutic care (Gough, 2016; Macdonald, Millen, McCann, Roscoe, & Ewart-Boyle, 2012; Scottish Institute for Residential Child Care (SIRCC), 2009).

Therapeutic care is:

“...intensive and time-limited care for a child or young person in statutory care that responds to the complex impacts of abuse, neglect and separation from family. This is achieved through the creation of positive, safe, healing relationships and experiences informed by a sound understanding of trauma, damaged attachment, and developmental needs” (McLean, Price-Robertson, & Robinson, 2011:2).

To provide therapeutic care, staff and services must be trauma-informed and practice in a trauma-sensitive manner (see [NHS Education for Scotland National Trauma Training Framework](#)). This requires that all staff members understand the impact of trauma in general, including on child development and attachment (see [Section 3](#)) and for individual children; how and why their ways of coping with this trauma might be maladaptive; that under stress these children will often re-enact previous traumatic experiences with current caregivers; that the care system and responses to children in care can re-traumatise; the impact of trauma on staff; how and why agencies and staff respond in the ways they do; and how they might change, with staff training and support crucial to achieve this (Farragher & Yanosy, 2005; Furnivall & Grant, 2014). Moreover, it is essential that staff can create safe, stable, supportive and non-violent cultures and environments, with clear routines; provide consistent, empathic, available adults and relationships; and support children to learn about feelings and emotions, adaptive ways of coping with stress and self-regulation (Furnivall & Grant, 2014; Macdonald et al., 2012). Strengths-based approaches, the promotion of hope and belief in the capacity of children to grow and develop, and activities that build resilience and hope are key in achieving this (Furnivall & Grant, 2014; Miller & Baxter, 2019). It is recognised that all members of the team around the child have a contributory role in achieving the above and for some young people, additional support for example from mental health services and other specialist services may be required (see [Section 10](#)). It is critical such support is available and accessed as required, although it is noted this can be challenging to achieve in practice (Gough, 2016; Nolan & Gibb, 2018).

Social pedagogy

Social pedagogy is often considered to be a way of thinking which forms the basis of practice in RCC, encapsulated in the concept of ‘haltung’, which is broadly translated as ethos, mind-set or attitude and describes the extent to which one’s actions are congruent with one’s values and fundamental beliefs (Eichsteller & Holtoff, 2010; M Smith, 2011). It is often described as education in the broadest sense and has a focus on upbringing and community capacity (M Smith, 2011). Social pedagogues draw on the dimensions of head, hands and heart in their practice, meaning they combine intellectual, practical and emotional qualities and engage across these three domains (M Smith, 2011). It is relationship-based practice and social pedagogy identifies three ‘selves’ - the professional, the personal and the private. It is only the private self that is kept apart from those we work with. The professional and personal ‘selves’ are brought to all interactions and combine to come together with those they work with around shared activities to promote empowerment (M Smith, 2011). The concept of the “common third” is key and is about the use of an activity (or a shared situation) to strengthen the bond between the social pedagogue and the child and promote the development of new skills (Milligan, 2009). Every situation and the individuals involved are inevitably different, meaning social pedagogy is diverse in method and there is no single best practice.

The involvement of children and families

Children and their families should also be regarded and included as a key partner in decision making about their lives and care, care planning, support provision and reviews, with their rights and role in assessments and planning having been strengthened in the [Children and Young People \(Scotland\) Act 2014](#) and as detailed above. The participation of children in decision making is a right but it is recognised too often that children's voices, views, wants and needs are not heard, listened or responded to, or taken into account in decision making, nor are children meaningfully involved in decisions, which is often compounded when children are in conflict with the law (Independent Care Review, 2020; Lightowler, 2020; Together Scotland, 2019). Providing children with information and understanding of their rights and entitlements, as well as any resources needed to support engagement and inclusion, is key in supporting participation (Independent Care Review, 2020). Advocacy can have an important role in supporting children to have their voice heard and rights to participation upheld, but access to independent services can be inconsistent. This is an area of current focus in Scotland, with the Independent Care Review (2020) having outlined key principles for advocacy (Together Scotland, 2019). It is however a responsibility of all members of the team around the child to uphold children's rights to participation.

Children have a right to family contact, including with parents and siblings, unless this is contrary to the child's best interests, and may return to reside with their family on leaving care, with the provision of support to families, supporting family contact where appropriate, and family work a key role for the team around the child (Malloch, 2013; Together Scotland, 2019). The Independent Care Review (2020) has reiterated the vital necessity of therapeutic support to families, including where children are removed from their care, based on authentic relationships and that is long-lasting, with ten key principles of intensive family support having been identified such as support being responsive and timely, flexible, non-stigmatising, working with families' assets, and the importance of engagement and advocacy. The range of activities undertaken in supporting families varies, necessary given the variation in need of the families involved, but can include supporting and promoting family contact (where appropriate); the provision of practical and emotional support; phone contact; providing information about the RCC establishment and processes; keeping parents updated on their child's progress; involvement in programmes and interventions; and transition planning (Malloch, 2013). The provision of such support is the responsibility of all of the team around the child, but the RCC staff often have a particular role given their accessibility to the family and provision of the day-to-day care for the child. To promote and support these roles, the organisational culture and ethos should be family centred, which can be evidenced in service availability (including cost of transportation for visits/contacts, parenting programmes); parental involvement (including accessibility for parents and full participation in decision-making processes affecting the young person); and staff attitudes and expectations (especially related to contact, parental rights and reunification) (Ainsworth, 1997).

Given that this guide specifically relates to youth justice, the following section will focus on responses to offending in RCC.

4. Responding to Offending in Residential Childcare

The relationship between care, offending and criminalisation is neither automatic nor straightforward (Bateman, Day, & Pitts, 2018). The vast majority of looked after children do not come to the attention of the police and in RCC, when they do this can be for a range of reasons other than offending, including absconding and victimisation (Moodie & Nolan, 2016). Moreover, in some cases entry to care can result in a reduction in offending and/or desistance (Bateman et al., 2018). Nonetheless, there has been longstanding concern regarding the criminalisation of looked after children, particularly those in RCC, nationally and internationally ((The Howard League for Penal Reform, 2016). The data that is available in England and Wales suggests that looked after children come into contact with the youth justice system at a higher rate than the general population and this is particularly the case for those children looked after in children's houses (NACRO, 2003; UK Government, 2011; Zayed & Harker, 2015). The Howard League for Penal Reform (2016, 2018) found children living in RCC in England and Wales are at least 13 times more likely to be criminalised than all other children. Sixteen and 17 year olds in children's homes were more than twice as likely to be criminalised as children in other forms of care and nearly 20 times more likely to be criminalised (convicted or subject to a final warning or reprimand) than a non-looked after peer, and while 2018/19 data does indicate significant reductions in criminalisation of children in residential care, overrepresentation continues (The Howard League for Penal Reform, 2016, 2018, 2020).

In Scotland, although there is a lack of data, the [Scottish Government \(2018, p.13\)](#) have acknowledged the behaviours of children with care experience (especially those looked after away from home) "are more likely to have been reported to police - and therefore to attract a criminalising state response - than Scotland's child population in general". The small-scale study (Moodie & Nolan, 2016) regarding responses to offending in residential childcare highlighted concerns about the level of police contact for the children in the houses studied, particularly regarding the high number of offences committed by the same young people and number of charges for breach of bail and vandalism. Moreover, research consistently highlights that care leavers are more likely to be involved with the criminal justice system, with 46% of the young people responding to the Scottish Prisoner Survey in 2017 reporting being in care as a child (Cameron, Broderick, & Carnie, 2017; Scottish Care Leavers Covenant, 2015). It is important that we develop mechanisms locally and nationally for gathering single and multi-agency, locally and nationally collected consistent data, including on the prevalence of police contact, the types of offences resulting in such contact, gender, placement type, offending prior to entering residential care and outcomes of such contact, if we are to be able to understand and monitor the issue of criminalisation (Cameron et al., 2017; Nolan & Gibb, 2018).

Efforts to explain the overrepresentation of looked after children and care leavers in the criminal justice system have generally been threefold (Bateman et al., 2018). Firstly, it is noted that the risk factors for entering care are similar to those for young people becoming involved in offending such as experiences of adversity, trauma, abuse and neglect (Moodie & Nolan, 2016) (see Section 3). The second explanation focuses on the potential consequences of being in care that can increase the risk factors for involvement in offending and thus the likelihood of criminalisation, such as placement instability; responses to missing episodes/absconding; peer group influences; loss of attachment to family and friends; and the increased likelihood of being criminalised for behaviour that, were they at home with

parents or other carers, would be unlikely to result in police contact (Bateman et al., 2018; NACRO, 2003). This has led some authors to question if RCC is a criminogenic environment (see for example Gerard, McGrath, Colvin, and McFarland (2019)) and Ashford and Morgan (2004) have described young people in care as experiencing a form of “double jeopardy”. The third explanation relates to the response of the justice system to looked after children once system contact has been made and the potential for a more punitive and formal response than for non-looked after peers (Bateman et al., 2018). For example, Staines (2016) describes the impact of structural criminalisation, by youth justice processes and agencies, arguably related to the stigma of care and low aspirations for children in care.

Similarly, the Independent Care Review (2020, p. 91) has concluded that: “There is no evidence that care experienced children engage in more offending behaviour than their peers, but the consequences of their behaviour whilst in care are much more likely to result in criminalisation. It is the settings of care and workforce responses to behaviour that drives the criminalisation of care experienced children. Scotland must stop that criminalisation by supporting the workforce to behave and treat children in a way that is relational rather than procedural and process driven”.

In respect of the latter two explanations, in RCC there are some behaviours where, due to legislation and/or organisational policy, involving the police is largely non-negotiable but for many behaviours that would be deemed offences in other contexts e.g. violence towards others, threat of violence or harm, damage to, or theft of, property, RCC staff can exercise discretion on how to respond (Moodie & Nolan, 2016). Research has indicated that determining how to respond to offending behaviour is often complex for RCC workers, involving the reconciling of a range of dilemmas and tensions and the exercising of professional judgement (Moodie & Nolan, 2016). Moreover, when a crime is reported to the police and there is evidence that a crime has been committed, under the [Scottish Crime Recording Standards](#) the discretion available to the police in terms of how to respond is limited, although a pilot project lead by Police Scotland is underway to explore alternative responses in RCC. In turn, the response from the justice system to reported incidents of offending behaviour can take various routes (see [Youth and Criminal Justice in Scotland: The Young Persons Journey](#)). There is emerging evidence on the additional interplay of gender and ethnicity on such complexity, including factors such as levels of vulnerability and trauma, perceptions, and stigma, although this has been accredited less attention, including in Scotland (Fitzpatrick et al., 2019).

Within such complexity, it is agreed that police contact should be avoided unless it is absolutely necessary given the significant impact this can have on children’s future outcomes, including the detrimental impact of premature involvement with formal systems and the justice system on offending behaviour, as found in the Edinburgh Study of Youth Transitions and Crime (McAra & McVie, 2010), and on life chances and opportunities resulting from the need to disclose childhood criminal records (Moodie & Nolan, 2016; Nolan, 2018). This is also a matter of children’s rights and corporate parenting (Nolan & Gibb, 2018). A number of factors have been identified that can support robust, confident and considered decision making in responding to offending behaviour, many of which may also promote good practice in responding to other pain-based behaviours, as detailed below (Nolan & Gibb, 2018).

Relationships: As detailed above, relationships are fundamental in RCC and in responding to offending behaviour, relationships are also key. Fitzpatrick et al. (2019, p. 18) have stated

“Corporate parents are vital in this regard since stable placements with sensitive caregivers and appropriate professional support can reduce the risk of justice involvement (Schofield et al., 2014; Schofield, et al., 2015; Taylor, 2006)”. This includes relationships with residential staff, the children in care and their families, police, social work, health, and education, as well as between RCC workers and their managers (Moodie & Nolan, 2016; Nolan & Moodie, 2018). The relationships between residential workers and the children in their care are key in preventing and defusing situations, thus preventing the need for police contact, and require that staff members know the child in question, their history and their behaviours and what works for them individually, and if it would be better for another staff member to intervene (Moodie & Nolan, 2016). The police have also been recognised as a key partner and are often deemed gatekeepers to the justice system, with the relationships between RCC workers and the police cited as crucial for sharing information, preventing crises and gaining advice, guidance and support (Bateman et al., 2018; Moodie & Nolan, 2016). Having a single point of contact within local police for children’s houses is useful and while efforts to build relationships between the police and young people have often been promoted, for example through the use of informal visits, it is important that unintended consequences of such contact, including drawing young people into further contact with the justice system, labelling and stigmatising (thereby creating a self-fulfilling prophecy), and normalising police interactions that would not occur in non-care settings are considered (McAra & McVie, 2010; The Howard League for Penal Reform, 2017). Moreover, as detailed above the role of the lead professional in responding to offending behaviour is crucial and the young person’s family. The lead professional should be informed of incidents of offending behaviour and responses, as well as being involved in discussions about how they were managed, and how to use the learning from the incident to shape future practice, which should be reflected and recorded in the Child’s Plan (Nolan & Moodie, 2018). Fundamentally, all agencies need to listen to children and really hear what they tell us, using this learning to effect change (The Howard League for Penal Reform, 2017).

Partnership working and a joined-up approach: Responding to offending in RCC requires the involvement, and is the responsibility of, a range of partners, including the young person and their family, with The Howard League for Penal Reform (2017:1) stating “multi-agency working is essential to put in place the structures and support needed to address factors leading to the criminalisation of children in residential care”. To support partnership working it is crucial that each agency has a clear and agreed understanding of their own role and responsibilities in responding to offending behaviour and any discretion that can (or cannot) be exercised, which can be shared with other agencies (Nolan & Moodie, 2018). This should promote a joined up understanding of what each agency can do, the limitations of their role, and expectations, which should be coupled with reaching a shared, baseline understanding of the needs and experiences of looked after children; the impact of these experiences on young people; the potential impact of professional responses on these children; the purpose of residential child care and what individual houses and placements are trying to achieve; and the impact of criminalisation (Nolan & Moodie, 2018). Strategies that can support such an approach include joint training; sharing of information and knowledge from each other’s areas of expertise; ongoing communication; and opportunities to come together in multi-agency forums (Nolan & Moodie, 2018).

Organisational policies: RCC providers will often have a range of policies and procedures to guide staff practice and clarify expectations in responding to behaviors. This will include physical restraint, which is defined in *Holding Safely* (Davidson, McCullough, Steckley, & Warren, 2005:8) as “an intervention in which staff hold a child to restrict his or her movement

and should only be used to prevent harm". This is an area of practice gaining current focus in Scotland, with the Independent Care Review (2020) stating that Scotland must strive to become a nation that does not restrain its children, as well as highlighting what needs to be done while working towards this change, and one where there is a relationship with criminalisation (Nolan, 2019b). Similarly, the link between children going missing, responses to such instances and unnecessary criminalisation, has been recognised (The Howard League for Penal Reform, 2019). However, (Moodie & Nolan, 2016) found the existence of policies specifically in respect of responding to offending behavior varied, a finding echoed elsewhere (see for example Gerard et al. (2019)). Furthermore, RCC workers reported that policies and procedures can only ever provide guidance, and responses require to be individualised depending on the circumstances of the incident, and a matter of professional judgement (Moodie & Nolan, 2016). In England and Wales, [The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers](#) has been developed, although there is no similar protocol in Scotland. In many areas, local multi-agency policies are agreed or are being developed and at a minimum it is important that multi-agency goals and principles are agreed to inform practice (Nolan & Gibb, 2018). Such principles may include agreement that police contact is the option of last resort; that no child is unnecessarily criminalised; responses are proportionate, appropriate, non-punitive and responsive not reactionary; that any decision to contact the police is made in a thoughtful and considered manner; that efforts are made to understand pain-based behaviour; that efforts will be made to divert children from the formal criminal justice process, for example through early and effective intervention, diversionary and de-escalation measures, and restorative approaches; and that those children who are criminalised are supported through the justice process (Nolan & Gibb, 2018; The Howard League for Penal Reform, 2017).

Culture and ethos: The organisational culture and ethos is key in shaping day-to-day decision making and this should be positive, shared, well understood, supportive, respectful and child-centred (Moodie & Nolan, 2016; The Howard League for Penal Reform, 2017). Within this, making a commitment to, and providing, good parenting; ensuring children's emotional needs, including for loving relationships are consistently met; promoting stability; the provision of homely environments and "normality"; listening to children and treating them with dignity and respect; and positive risk-taking are key components (Independent Care Review, 2020; The Howard League for Penal Reform, 2017). In addition, within the organisational culture the impact on staff of exposure, and responding, to pain-based behaviour must be recognised and staff should be supported, with regular opportunities built in to discuss approaches and reflect on events formally and informally, for example through staff meetings, supervision, incident evaluation and debriefing, although it is important debriefing is undertaken in a manner that feels useful and supportive to staff (Moodie & Nolan, 2016). Similarly, it is crucial that staff induction, training and professional development is invested in and prioritised to enable staff to understand behaviour; provide a range of strategies and a toolbox of resources that can be drawn upon in responding appropriately to behaviour; and promotes self-awareness (Moodie & Nolan, 2016).

5. Conclusion

This section has provided an overview of RCC as a vital part of the continuum of care in Scotland and introduced some of the key concepts and approaches in RCC. These include relationship-based practice and the group living environment; life space intervention; the therapeutic role of RCC; social pedagogy; and involvement of families. Particular attention has been devoted to responses to offending in RCC and the factors that can support decision making, towards the aim of ensuring police contact is avoided unless absolutely necessary. These factors include relationships, partnership working, organisational policies and culture and ethos. Throughout reference has been made to the factors that can help children in RCC to grow, develop and flourish and the fulfilment of children's rights.

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