CHILDREN AND YOUNG PEOPLE IN CONFLICT WITH THE LAW: POLICY, PRACTICE AND LEGISLATION

Section 14:
Residential Child
Care

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Contents

1. Introduction

On July 31, 2021, there were 13,255 looked after children in Scotland, an 8% reduction on the previous year (Scottish Government, 2021, 2022). However, the number of children living within residential care remained consistent at almost 10%.

This section will provide information to those working with children involved in, or at risk of, offending who live in residential care. This includes those working within residential establishments, social workers placing or supporting a child in residential care, and the wider team around the child. This section explores the role of this provision as a vital part of the continuum of care and provides an introduction to some of the key concepts and approaches in residential care for children. It also highlights concerns regarding the criminalisation of looked after children and factors that have been identified which can support decision making with 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 service is required to have; their local policies and procedures; and the findings and conclusions of the Independent Care Review (2020) set out in The Promise, #KeepThePromise, The Plan 21 – 24 and the Change Programme.

1.1 Roles, responsibilities and children's rights

Any child in residential care will have a variety of 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 those of one another. Getting it Right for Every Child (GIRFEC) illustrates that a Lead Professional will be identified when multiple agencies are working with a child; this provides children and their families with a single point of contact (Scottish Government, 2018). This Lead Professional has defined responsibilities including:

- The development and implementation of a Child's Plan for every child. This should be shared with the residential childcare service on admission and follow the child during their time in residential care; the coordinated support described in the plan should be provided, with regular reviews scheduled. Partners should communicate consistently in order to ensure that any relevant plans/updates are informed by, and incorporated into, the Child's Plan. Reviews should be regular and integrated as far as possible.

- Maintaining contact with the child, ensuring that they and their family understand what is happening at each point, and that they are integral to any decision making in matters that affect them (this is discussed further below).
- Promoting partnership working between agencies with the child and family at the heart of this
- Ensuring responsibilities are fulfilled (including timescales for reviews) in line with the Looked After Children (Scotland) Regulations 2009, Children and Young People (Scotland) Act 2014 and Children's Hearings (Scotland) Act 2011 (as applicable).

The GIRFEC National Practice Model framework underpins the assessment and planning process (Scottish Government, 2016). The Child's Plan should hold detailed assessment information and identify the outcomes that need to be met to ensure that the child is able to achieve the Getting it Right for Every Child (GIRFEC) wellbeing indicators; these should be developed with the child and their family. It is important that these outcomes are communicated to, and reviewed with, the residential placement; discussions should be held to consider how the placement, and other agencies, can support the achievement of the identified outcomes. The child will not live in residential care forever - they may return to their families, to other care services, or live in/interdependently. A clear plan to manage this transition needs to be developed (see Section 16).

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...*(ensuring)* 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. This includes those who live in residential care and care leavers who were looked after on their 16th birthday, or subsequently. These responsibilities apply until the young person reaches their 26th birthday (CELCIS, 2017). Every corporate parent is expected to fulfil corporate parenting duties in their own way, consistent with their 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 the support provided 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 further 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 crucial that these rights are understood by all corporate parents. Organisations should work in partnership with other corporate parents to develop their plan and meet the needs of children and young people (Scottish Government, 2015).

The UNCRC (1989) applies to all children, including those who are looked after away from home or are involved in offending behaviour (Section 11 provides further information). In March 2021 the Scottish Government unanimously passed the UNCRC (Incorporation)(Scotland) Bill 2020. (This was, however, challenged in the UK Supreme Court, and the Bill was sent back to Parliament for reconsideration and amendment). Children's rights are not optional, they apply to all children in all circumstances, but as highlighted 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; too often their rights are not upheld. Although all rights and articles of the UNCRC are relevant for children who live in residential care, those warranting particular attention include: the right of the child to be raised within their family (unless this is not in the child's best interests) (Article 18); the right of their parents to be provided with the support to do this (Article 18); and the right to special protection and assistance for children who are deprived of their family environment or for whom staying there would not be in their bestinterests (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); and leisure (Article 31). Services should promote the physical and psychological recovery and social reintegration of children who are victims 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; this requires that each child is supported to express their views, and these views should 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; this requires that all involved with the child promote and support family contact as appropriate (Article 9).

2. The Role of Residential Care for Children

Residential care for children should be recognised as an important, valued and integral part of children's services. It can offer therapeutic care and protection for those children who require intensive care and support, whatever their age and needs. This provision is designed to offer a safe and nurturing homely environment for children to grow and develop (Care Inspectorate, 2019b). A wide range of care provision is available for children in Scotland who are looked after by their local authority on a full-time basis, or as part of respite and crisis

care. These may be in urban or rural settings, and are delivered by the voluntary, statutory and private sectors (Care Inspectorate, 2019b).

The term residential care for children is used to refer to residential homes or schools or secure accommodation (Care Inspectorate, 2019b). Children's houses provide accommodation and support for children, usually in small houses (Care Inspectorate, 2019b). Whittaker, Holmes, del Valle, and James (2023, p. 6) also describe 'therapeutic residential care' services which are specialist children's houses: "while sharing certain common setting characteristics, these services vary greatly in treatment philosophies and practices including their purposes and the intensity and duration of interventions provided." Most children's houses 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). This trend has continued (Scottish Government, 2022). Residential schools are more likely to be provided by the third sector; these offer residential care with educational provision onsite (Scottish Government, 2017). Education is a right for all children; under the Education (Additional Support for Learning) (Scotland) Act 2009 all looked after children are automatically deemed to have additional support needs, unless the education authority assesses the child as not needing additional support to benefit from school education.(Care Inspectorate, 2019b)

In 2020 1,436 children lived within children's houses or residential establishments, reducing to 1,286 in 2021 (Scottish Government, 2021). Local authorities have legal duties to care for children either through voluntary arrangements or on a compulsory basis through the Children's Hearings System on a compulsory supervision order (CSO). Children may be the subject of a CSO when they meet the grounds for referral set out in Section 67 of the Children's Hearings (Scotland) Act, 2011. Grounds can result from issues relating to care and protection or 'offence-based behaviours' (SCRA, 2021). Most children continue to be referred to the Reporter on care and protection only grounds (85%). For several years, children have been placed within residential provision and secure care from outside Scotland; there placements are referred to as Cross Border. These children may be the subject of Care Orders or Deprivation of Liberty Safeguards issued in England and Wales.

Secure care is the most intensive and restrictive form of alternative care in Scotland (Gough, 2016). Secure care can provide care, accommodation and education for up to 84 children across four independent charitable services and one service that is run by Edinburgh City Council; on the 31st January 2023 the Secure Accommodation Network Scotland (SAN) recorded that 71 children were placed across the five secure care providers. There are various routes to secure care 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; via police powers; and having been sentenced or remanded by the court (Nolan, 2019a). Most residential care services for children, and all of the independent secure care providers, have a framework in place through Scotland Excel, to support the identification and achievement of outcomes for children in their care.

The Secure Care National Project presented a number of key messages reflected in calls for action and recommendations, many of which were incorporated into the Secure Care Pathway and Standards Scotland. The Standards 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 people in, or on the edges of, secure care in

Scotland should expect and provide a framework for ensuring the rights of children are respected and outcomes are improved. These children may be experiencing extreme vulnerabilities, needs and risks in their lives. The Standards establish a coherent set of expectations that should be embedded in a child's journey before, during and after their stay in secure care.

2.1 The Regulation of Residential Placements

Residential establishments are inspected by the Care Inspectorate on an annual basis, and more often if 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 HMIE, 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; these are available on the Care Inspectorate website.

Residential care for children has been the subject of various inquiries and investigations; concerns have been raised about its role, and abuse in care. The Scottish Child Abuse Inquiry, that began in 2015, remains ongoing. This form of care is often perceived as the 'last resort' for children where other placements have not worked out, and/or as the 'safety net' for the rest of the childcare system (Scottish Institute for Residential Child Care (SIRCC), 2009; Skinner, 1992). However, numerous national enquires have reached the conclusion that residential care is a "positive choice" and the right option for some children and young people (Independent Care Review, 2020; Kendrick, 2013). Crucial to this form of care is the presence of caring and nurturing staff who can provide qualitative, stable and persistent caring relationships within a homely environment (Kendrick, 2013). Furnivall (2011) highlights that responsive caregiving is critical to ensuring that children are able to form secure attachment relationships. Key to achieving this is: the culture of the establishment; having values that uphold children's rights and are therapeutic; demonstrating good quality planning and decision-making(for individual children and the service as a whole); placement stability; implementing non-stigmatising and child-informed rules; and appropriate staffing arrangements, stable staff groups and supportive staff teams (Care Inspectorate, 2019b; Kendrick, 2013; The Howard League for Penal Reform, 2018; Together Scotland, 2019). A number of the key components and approaches are explored further below.

3. Key Concepts and Approaches

3.1 Relationship-based practice and the group living environment

Johnson and Steckley (2023) highlight that while there is an absence of a dominant conceptual model or approach within residential care in Scotland, a relational model prevails. Building relationships as a therapeutic process, and the basis for overcoming trauma, is a well-defined concept in childcare; reciprocal, consistent, sustained, stable, nurturing and interdependent relationships are recognised to be the foundation for all interactions. This is the golden thread of good practice, and critically important if positive outcomes are to be achieved for children (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 essential for enabling other aspects of hope to emerge, as well as for helping children to feel emotionally safe and cared for (Miller & Baxter, 2019). In residential care, children are expected to manage multiple relationships by virtue of the group living environment, where they will cohabit with unrelated peers, care staff (one or more of whom will normally be allocated as a keyworker for the child), education and other support/ancillary staff (Anglin, 2002). What is unique to residential care for children 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; this results in relationships that can become kin-like (Kohlstaedt, 2010):

> "Contemporary residential childcare 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. Children's previous experiences of relationships and their impact should be understood; the importance of, and benefits provided by, such relationships should be recognised, alongside any risk management concerns. Relationship-based practice should be prioritised, and opportunities made available to support sustaining relationships beyond any placement (Fitzpatrick, Hunter, Staines, & Shaw, 2019; Furnivall, 2011; Hayden, 2010; Scottish Care Leavers Covenant, 2015).

3.2 The Promise and Keeping the Promise

The Promise and Keeping the Promise highlight 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 from 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.

- Children 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 allows the opportunity for supportive relationships to develop whilst driving a child or young person to school or college.

- Residential care for children must be supported and resourced, to keep places open for children in line with continuing care legislation. Scotland must ensure that this care and support is not ended when children do not want to leave / are not ready to leave.

- The inspection of residential settings must focus on the children's experience of relationships. Inspections must be led primarily by what those who live in residential homes say, and how they feel they are being cared for

3.3 Life space intervention

A further unique component of the residential environment is that the life space of the children (where they eat, sleep, relax, express emotions, have fun, test boundaries and learn) is also where the staff are based and conduct most of their work (Whittaker, 1981). Life space intervention sees the group living environment as providing a context for opportunity-led work. This is achieved by actively and thoughtfully engaging with children and young people, distinct from the planned or structured interventions which are typical in social work practice (Smith, 2009; Ward, 2002). Using daily life and routine events as on the spot opportunities for learning and counselling requires an understanding of the importance of staff being able to develop and maintain positive relationships; they must be able to observe and respond to behaviours, understand the context of these behaviours and use insight and self-awareness in deciding the best way to intervene (Garfat, 2002). Of equal importance is the need for staff to be self-reflective to ensure that they learn from the intervention experience and their role within it; moving forward they will then be able to apply what is learned to future situations (Anglin, 2002; Smith, 2005). The conscious use of everyday events for therapeutic purposes is of course not new. However, alongside relationship building, the potential to consciously harness everyday care experiences in order to enhance development and promote healing is one of the most fundamental and powerful things that residential childcare can uniquely provide (Emond, Roesch-Marsh, & Steckley, 2016).

3.4 The therapeutic role of RCC

Children's residential care provides both direct and indirect care, Direct care is evident in structures and routines, personal care, individualised care planning, developmental and educational input and therapeutic and everyday counselling opportunities. By contrast, direct care is reflected in the systems, processes and resources that provide the infrastructure for direct care activities (Ainsworth & Fulcher, 2006). Children in residential care have often experienced adversity, trauma, placement instability and breakdown, and loss (Gough, 2016). As Steckley (2018, p. 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". It is crucial

therefore that residential environments are therapeutic and trauma-informed. Johnson and Steckley (2023, p. 61) illustrate that over the past decade there has been an increasing range of professionals working within residential care. These include "in-house psychologists, therapists and other professionals due to an increased recognition of children's mental health needs."

In dealing with their emotions, and as a means of surviving and having their needs met in the face of the adversity and trauma they may have experienced, many children in residential care develop strategies or behaviours that help them to cope. 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 those residential workers who provide the day-to-day care for these children (Anglin, 2002; Gough, 2016). Such presenting behaviours may include: violence and aggression; problematic drug and alcohol use; self-harming (further information on mental health can be found in Section 10); running away; law breaking; withdrawal; misplaced anger; or allegations. Children who may have been in survival mode to keep themselves safe may find it difficult to form secure attachments, leading to further feelings of fear, isolation and loneliness. A response to these feelings may present as a child attempting to control their environment, as they are fearful of the world around them.

It is crucial that those working within residential care can help children to understand, and make sense of, their previous experiences, whilst recognising and responding to the impact such experiences may have on their day-to-day functioning, behaviour and wellbeing. Supporting children to regain or develop a sense of self-worth, self-efficacy and hope for the future is very important; children should be helped to is develop the skills to negotiate and maintain those interpersonal relationships which will be necessary for future roles and responsibilities (Gough, 2016). This requires going beyond the provision of basic care, providing support that 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).

For staff to facilitate learning, development and growth they need to be able to contain the emotions of children. Containment is described as being able to manage and effectively deal with emotions and experiences. It is recognised that staff need to be tuned in to their own emotions to be emotionally available to the children that they care for (Emond et al., 2016).

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). Across residential care a range of approaches are taken, with providers delivering and embedding trauma informed practice in service provision. This requires that all staff understand the impact of trauma in general, including on child development and

attachment (see Section 9).For individual children consideration should be given to: how and why their ways of coping with trauma might be maladaptive; the fact that under stress these children will often re-enact previous traumatic experiences with current caregivers; the fact 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 achieving 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; are a consistent, empathic, available presence; and support children to learn about feelings and emotions, and 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 to play in achieving the above; for some children additional support may be required, for example from mental health services and other specialist services (see Section 8). It is critical that such support is available and accessed as required, although it is noted that there can be challenges to achieving this in practice (Gough, 2016; Nolan & Gibb, 2018).

3.5 Social pedagogy

Social pedagogy is often considered to be an approach which forms the basis of practice in residential care for children. This is encapsulated in the concept of 'haltung', which is broadly translated as ethos, mindset or attitude, and describes the extent to which one's actions are congruent with one's values and fundamental beliefs (Eichsteller & Holtoff, 2010; Smith, 2011). It is often described as education in the broadest sense and has a focus on upbringing and community capacity (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 (Smith, 2011). This 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; when working with children they come together around shared activities to promote empowerment (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). This enables both children and adults within the life space to learn from each other and every situation; the individuals involved are inevitably different, meaning social pedagogy is diverse in method and there is no single best practice. Social pedagogy continues to be a model that informs practice within residential care for children (Johnson & Steckley, 2023).

3.6 The involvement of children and families

Children and their families are key partners in decision making about their lives and care, care planning, support provision and rights and roles in assessments and planning have been strengthened in the Children and Young People (Scotland) Act 2014, and children's

right to express their views is enshrined in the UNCRC under Article 12. The participation of children in decision making is a right but it is has been recognised that children's voice, views, wants and needs are not always heard, listened or responded to, or taken into account in decision making. Nor are children meaningfully involved in decisions, which is often compounded when they are in conflict with the law (Independent Care Review, 2020; Lightowler, 2020; Together Scotland, 2019). Providing children with information and an understanding of their rights and entitlements, as well as the resources needed to support engagement and inclusion, is key to embedding and supporting participation (Independent Care Review, 2020). The Children and Young People's Commissioner Scotland's (CYPCS) seven golden rules of participation is an invaluable resource for adults working with children. 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 had been a focus in Scotland, with the Independent Care Review (2020) having outlined key principles for advocacy; the Care Inspectorate monitor this as part of their inspection framework. It is the responsibility of all members of the team around the child to uphold children's right to participation (Together Scotland, 2019).

Children have a right to family contact, including with parents and siblings, unless this is not in their best interests, and they may return to live with their family on leaving care. The provision of support to families, supporting family contact where appropriate, and family work play a key role for the team around the child (Malloch, 2013; Together Scotland, 2019). The Independent Care Review (2020) has reiterated the necessity of therapeutic support for families, including where children are removed from their care, based on authentic long-lasting relationships. Ten key principles of intensive family support have been identified. These include support being: responsive and timely; flexible; non-stigmatising; based around families' assets; and reflecting the importance of engagement and advocacy. The range of activities undertaken in supporting families varies (this is necessary given the variation in the needs of 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 residential 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 working with the child, but the residential staff often have a particular role to play given their access to the family and their provision of 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).

As this guide has a specific focus on youth justice, the following section will focus on responses to offending in residential childcare.

4. Responding to Offending in Residential Care for Children

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; in residential care, when they do, this can be for a number of reasons other than offending, including running away 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 have been longstanding concerns regarding the criminalisation of looked after children, particularly those in residential care, both 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, 2012; UK Government, 2011; Zayed & Harker, 2015). The Howard League for Penal Reform (2016, 2018) found children living in residential care in England and Wales are at least 13 times more likely to be criminalised than all other children. 16- 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. 2018/19 data does indicate significant reductions in the criminalisation of children in residential care, but overrepresentation continues (The Howard League for Penal Reform, 2016, 2018, 2020).

While there is a lack of comparable data in Scotland, 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". Although some time ago now, the small-scale study (Moodie & Nolan, 2016) regarding responses to offending in residential childcare highlighted concerns about the level of police contact for children in the houses studied, particularly regarding the high number of offences committed by the same children, and the number of charges for breach of bail and vandalism. In a scoping report published by Clan Childlaw, Lightowler (2022, p. 22) highlighted the importance of the role of lawyers for children and young people in challenging the criminalisation of behaviours that were 'interpreted as an assault'.

Research also consistently highlights that care leavers are more likely to be involved with the criminal justice system: 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). McAra and McVie (2022) have also shown consistently, in the Edinburgh Study of Youth Transitions and Crime, that early involvement with formal judicial systems can negatively affect desistance despite most children who do come into conflict with the law not being further involved in criminal activity by early adulthood. It is important that we develop mechanisms locally and nationally for consistently gathering single- and multi-agency data, including on the prevalence of police contact, the types of offences resulting in such contact, gender, placement type, offending activity prior to entering residential care and outcomes of such contact. This is key 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 children becoming involved in offending, such as experiences of adversity, trauma, abuse and neglect (Moodie & Nolan, 2016) (see Section 9). 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 and running away; 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, 2012). This has led some authors to question if residential care is a criminogenic environment (see for example Gerard, McGrath, Colvin, and McFarland (2019)). Ashford and Morgan (2004) have described children 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 that which would be received by 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 stigmatisation of care and low aspirations for children in care.

Similarly, the Independent Care Review (2020, p. 91) 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". Scotland's increasingly rights-respecting approach should help to enhance the promotion of a more trauma informed relational way of working.

In respect of the latter two explanations, in residential care there are some behaviours where, due to legislation and/or organisational policy, involving the police may be 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 - in residential care staff can exercise discretion in how they respond (Moodie & Nolan, 2016). Research has indicated that determining how to respond to offending behaviour is often complex for residential workers, involving the reconciling of a range of dilemmas and tensions and the exercising of professional judgement (Moodie & Nolan, 2016). Moreover, when an issue 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 explored alternative responses in this setting. In turn, the response from the justice system to reported incidents of offending behaviour can take various routes (see The Child's 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 given less attention, including in Scotland (Fitzpatrick et al., 2019). The Sentencing Council (2022) guideline should help practitioners in youth justice to develop a more understanding approach towards children and young people.

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. This includes the detrimental impact of premature involvement with formal systems and the justice system on offending behaviour, as found in the Edinburgh Studies (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).

4.1 Relationships

Relationships are fundamental in residential care and in responding to offending behaviour. 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". This includes relationships between residential staff, children in care and their families, police, social work, health, education, and specialists, as well as between residential 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; these 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 residential 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 departments for children's houses is useful and while efforts to build relationships between the police and children have often been promoted, for example through the use of informal visits, it is important to consider the unintended consequences of such contact, including: drawing children 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 (McAra & McVie, 2010; The Howard League for Penal Reform, 2017). Moreover, the role of the Lead Professional and the child's family in responding to offending behaviour is crucial. The Lead Professional should be informed of incidents and responses, and be involved in discussions about how they were managed, and how to use the learning from the incident to shape future practice. This 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 affect change (The Howard League for Penal Reform, 2017).

4.2 Partnership working and a joined-up approach

Responding to offending in residential care for children requires the involvement, and is the responsibility of, a range of partners, including the child and their family. The Howard League for Penal Reform (2017:1) state that "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.

This in turn should be coupled with reaching a shared, baseline understanding of the needs and experiences of looked after children; the impact of these experiences on children; the potential impact of professional responses on these children; the purpose of residential childcare 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). A national joined up approach to addressing the criminalisation of children is needed if progress is to be made.

4.3 Organisational policies

Residential providers will often have a range of policies and procedures to guide staff practice and clarify strategies in responding to behaviors. This will include physical restraint, which is defined as "an intervention in which staff hold a child to restrict his or her movement and (which) should only be used to prevent harm" (Care Inspectorate, 2021, p. 20). The Scottish Physical Restraint Action Group (SPRAG) plays a key role in the reduction of restrictive practices and therefore the decrease in potential situations that could result in the criminalisation of children (Together, 2023).

This is an area of practice highlighted within the Independent Care Review (2020). This stated that Scotland must strive to become a nation that does not restrain its children, highlighting what needs to be done in working towards this change. It is noted that there is a relationship between the use of physical restraint and criminalisation (Nolan, 2019b). Similarly, the link between children going missing and the responses to such instances (ie.unnecessary criminalisation) has been recognised (The Howard League for Penal Reform, 2019). However, (Moodie & Nolan, 2016) found the existence of policies specifically relating to offending behavior varied, a finding that is also echoed elsewhere (see for example Gerard et al. (2019)). Furthermore, residential workers reported that policies and procedures can only provide guidance; responses require to be individualised depending on the circumstances of the incident and the professional judgement exercised (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; 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; no child is unnecessarily criminalised; responses are proportionate, appropriate, non-punitive and responsive, not reactionary; any decision to contact the police is made in a thoughtful and considered manner; efforts are made to understand pain-based behaviour; 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 come into contact with the criminal justice system are supported through the justice process (Nolan & Gibb, 2018; The Howard League for Penal Reform, 2017).

4.4 Culture and ethos

The organisational culture and ethos is key in shaping day-to-day decision making. This should be trauma informed, positive, shared, well understood, supportive, respectful and

child centred (Moodie & Nolan, 2016; The Howard League for Penal Reform, 2017). Within this key components include making a commitment to, and providing, good corporate 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 encouraging positive risk-taking (Independent Care Review, 2020; The Howard League for Penal Reform, 2017). In addition, organisations should recognise the impact on staff of working with and responding to trauma and pain-based behaviours. Staff should be supported, with regular opportunities built in to discuss approaches and reflect on events both formally and informally, e.g., through staff meetings, supervision, incident evaluation and debriefing; it is important that 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 receives prioritisation and investment. This will 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 promote self-awareness (Moodie & Nolan, 2016).

5. Conclusion

This section has provided an overview of residential care for children, viewing it as a vital part of the continuum of care in Scotland. It introduced some of the key concepts and approaches in residential care. These include relationship-based practice; trauma-informed care; the group living environment; life space intervention; the therapeutic role of residential care for children; social pedagogy; and the involvement of families and specialist supports. Particular attention has been devoted to responses to offending in this setting and the factors that can support decision making. One aim should be to ensure that police contact is avoided unless absolutely necessary, to prevent the criminalisation of children and their early contact with the criminal justice system, which can have potentially lifelong implications. Factors involved in decision making include relationships, partnership working, organisational policies, culture and ethos. Throughout, reference has been made to the factors that can help children in residential care to grow, develop, flourish and reach their full potential. A rights-based approach and the fulfilment of children's rights, embedding participation and the promotion of advocacy, is crucial.

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