



Criminal care

Children's homes and criminalising children

the Howard League for Penal Reform

Key points

- 'Looked after' children living in children's homes are being criminalised at excessively high rates compared to all other groups of children, including those in other types of care
- Staff in children's homes are too frequently calling out the police, often over minor incidents
- Exposure to the criminal justice system affects the already damaged life chances of these highly vulnerable children
- Three-quarters of England's 1,760 children's homes are run by private companies
- Lack of transparency, particularly in relation to private children's homes, means that homes are not accountable, bad practices are hidden and children suffer
- These problems are widely recognised by the government, the police, local authorities, Ofsted and other relevant authorities but they are not being addressed
- In 2014, 5,220 children were living in children's homes. The number of children going into care is at its highest point in 30 years

Overview

Children's homes are responsible for some of the most vulnerable children in society. Rather than providing the help and support these children so desperately need, however, children's homes are increasingly criminalising children and reducing their already damaged life chances. Most children in care will have been in care before (30 per cent will have had six or more previous care placements); many will have experienced abuse and neglect, and the majority will have a range of complex needs.

The majority of children's homes are run by private companies, some of the largest of which are owned by foreign private equity companies whose main aim is to make a profit. The lack of transparency these companies enjoy and the lack of accountability required of them by government, local authorities, the police and Ofsted are allowing these practices to continue unchecked. Attention and resources need to be put into providing support for looked after children during their teenage years so that they are not pushed into the criminal justice system by the homes that are supposed to be helping them.

Definitions

Under the Children Act 1989, a child is legally defined as 'looked after' by a local authority if he or she:

- is provided with accommodation for a continuous period for more than 24 hours;
- is subject to a care order; or
- is subject to a placement order.

A looked after child ceases to be looked after when he or she turns 18 years old.

Numbers of children in care are increasing

On 31 March 2015, there were 69,450 children in care. This is a large figure but it belies the true picture: in 2014/15, 99,230 children were looked after by the state at some point. According to national statistics, the number of children going into care has been increasing steadily over the past seven years and it is now higher than at any point since 1985. There is a rise in the number of children aged 10 and over coming into care: 12,120 in this age group came into care in 2013, increasing to 13,870 in 2015.

Most children are placed with foster carers (75 per cent of looked after children were with foster carers last year). The rest are cared for in secure units, children's homes, residential schools and

hostels, or they are living at home, with their parents, under the supervision of social services.

In 2014, 5,220 children were living in children's homes. One in four of these children were living in a children's home deemed only 'adequate' by Ofsted, 59 per cent were living in a home deemed 'good' and only 16 per cent in one judged by Ofsted to be 'outstanding'. One hundred and forty-six local authorities (97 per cent) had placed children in one of the homes labelled only adequate or worse. Inadequate judgements increased – from 6 per cent (130) in 2013/14, to 9 per cent (197) in 2014/15.

Characteristics of looked after children

The majority of looked after children have come into care because of abuse and neglect (61 per cent in 2015). In 2014, 67 per cent of looked after children had a special educational need, the most common being 'behavioural, emotional and social difficulties'; only half (50 per cent) of looked after children have emotional and behavioural health 'that is considered normal'. In 2014, just 12 per cent of looked after children achieved five or more GCSEs at grades A* to C including mathematics and English, compared with 52 per cent of children not in care. Local authorities report that they are experiencing increased demand for care for children aged 13 years and over with a range of very complex needs.

Outcomes for children in children's homes are generally poorer than for other looked after children.

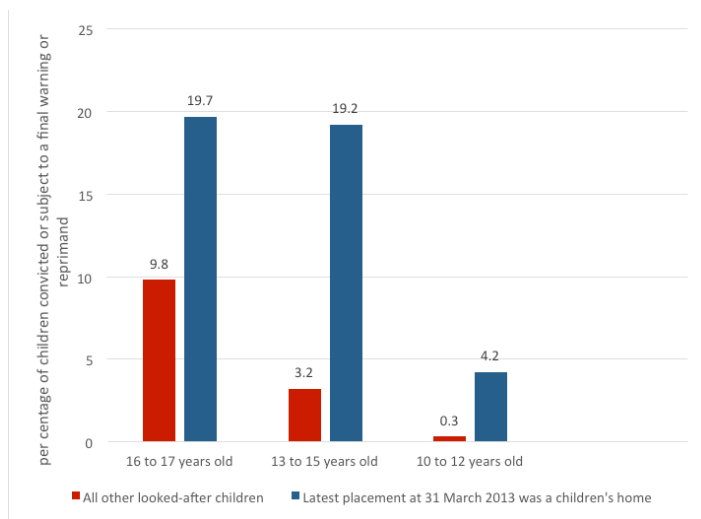
Children in children's homes are being excessively criminalised

Looked after children in all forms of care are being criminalised at a much higher rate than non-looked after children. Despite accounting for less than 1 per cent of the total population, a 2012/13 survey of 15 to 18-year-olds in young offender institutions, found that a third of boys and 61 per cent of the girls surveyed reported being in local authority care at some point. In 2013/14, 6 per cent of looked after children aged 10 to 17 had been convicted or subject to a final warning or reprimand, compared to around 1 per cent of non-looked after children. In 2015, 37 per cent of the children in young offender institutions were looked after children.

Children in children's homes are much more likely to have been exposed to the criminal justice system than looked after children in other kinds of care. Local authorities are required to inform

the government on an annual basis as to whether any child over the age of 10, who has been looked after continuously for at least 12 months, has been convicted or subject to a youth caution during the year. Given that in 2013/14 only 23 per cent of the children whose placements ceased had been in those placements for one year or more, the figures being collected are likely to fall far short of showing the true extent of the problem. The chart below, which contains the most recent available figures, should therefore be assumed to be the tip of the iceberg.

Percentage of children looked after for at least 12 months at 31 March 2013 who have been convicted or subject to a final warning or reprimand during the year: comparison between children looked after in children's homes compared to other looked after children (Department for Education)



The chart starkly illustrates the excessively high rates of criminalisation of children in children's homes:

- at 10 to 12 years, 4.2 per cent of children in children's homes have been criminalised as opposed to 0.3 per cent of looked after children in other placements;
- the figures rise dramatically in the 13 to 15-year-old age group: 19.2 per cent of children in children's homes were criminalised at this age. This means that children in children's homes are almost six times as likely to be criminalised as looked after children in other forms of care and nearly 20 times more likely to be criminalised than a non-looked after child of a similar age.
- the alarming rate of criminalisation of children in children's homes continues throughout the teenage years, rising to 19.7 per cent for 16 and 17-year-olds. At this point children in homes are more than twice as likely to be criminalised as children in other forms of

care and nearly 20 times more likely to be criminalised than non-looked after children.

The chart shows that levels of criminalisation of children in children's homes increase dramatically between the ages of 13 and 15. The children who are being criminalised whilst teenagers are the same children who, when younger, were sympathetically viewed as vulnerable, innocent and highly deserving of society's help and protection. There appears to be a 'tipping-point' around the age of 13 at which time these children lose society's sympathy and rather than being helped they are pushed into the criminal justice system.

It is well evidenced that stability is a key factor in achieving good outcomes for looked after children. Lack of stability affects many aspects of a child's life, including educational attainment, mental health, resilience and contact with the criminal justice system. Teenagers are far more likely to suffer fostering and other care placement breakdown than younger looked after children.

The government has hypothesised that the reasons for this include older children having more complex needs and challenging behaviour as well as the difficulties associated with the move to secondary school, although it is admitted that a better understanding of the issues leading to placement breakdown is required. Children in children's homes have the least stability of all looked after children: 48 per cent have had four or more placements, compared to 26 per cent of children in foster care. Rather than criminalising vulnerable children during their teenage years, government, agencies and children's homes need to focus on providing the care and support these children desperately need.

Children's homes are calling out the police over minor incidents

In 2013, the House of Commons Justice Committee concluded that more effort was needed from local authorities, children's homes and prosecutors to prevent the unnecessary criminalisation of vulnerable children in care and care leavers.

The report stated that children's homes were calling the police for minor offending and trivial incidents that would never come to police attention if they took place in family homes.

The Chair of the Committee, Sir Alan Beith MP, said:

Public authorities have a duty to ensure looked after children are not at greater risk of being drawn into the criminal justice system than other children simply because they do not live in family homes. Poor behaviour which would be dealt with within the family should not be an express route into the criminal justice system for children who do not have the benefit of a normal family life.

We heard one example of the police being called to a children's home to investigate a broken cup. A report published in March 2015 by HM Inspectorate of Constabulary for England and Wales stated that the police were frequently being called to deal with incidents where children's homes could not cope with a child's disruptive behaviour and that they sought to use the police as a way to discipline children.

Children's homes treat police detention as 'respite care'

The police have raised the following issues with the Howard League in relation to overnight detention and private children's homes:

- private providers of children's homes were using the police cells as respite to cover staff shortages and because staff were not trained and competent to deal with children's behaviour;
- the police were picking up the pieces of a 'social care deficit'. Children were being pushed into the criminal justice process rather than receiving the support they needed from local authorities and children's homes;
- there was a lack of confidence in the standard of children's homes and a perception by police that vulnerable children would be better cared for in the cells. These concerns had led to custody sergeants refusing private accommodation offered by the local authority; and
- when children in care were arrested, private contractors who run homes often refused to take the children back. Although there was a reasonable expectation that the home should let them back in, this was more likely to happen at midday the next day than at four in the morning.

Similar concerns were raised by the House of Commons Justice Committee in 2013: 'Child protection inspection findings have shown that a number of children remanded in police cells overnight were in local authority care. In one area . . . inspectors found that every young person, in their sample of case audits, who was involved in an incident in a children's home (nine incidents) was remanded in police custody, even though they were in the care of the local authority.'

'Missing' and 'absent' from care

Many calls to the police from children's homes relate to children who are 'missing' or 'absent' from the home. Evidence suggests that distance from home, family and friends is a key factor for looked after children being missing or absent from care. Local authorities are required to include data for children missing or away from placement without authorisation in their annual data returns on looked after children for the Department for Education. Children looked after in regulated children's homes are more likely to go missing from their placement than from any other type of placement. In 2012/13, 9 per cent of children were reported as having gone missing from a children's home, as opposed to 1 per cent from foster care.

In 2013, 31 per cent of children in children's homes were living in a home outside their local authority boundary and more than 20 miles from home, compared to 10 per cent of children in foster placements. Ann Coffey MP, Chair of the All-Party Parliamentary Group on Missing Children, told the House of Commons in January 2016, that children's homes were being set up in low-cost areas and that the evidence painted a picture of "a market that is run in the interests of the providers, not in the interests of children and young people".

Children's homes

The latest figures show that in 2014 there were 1,760 children's homes in England. Twenty-one per cent of these homes were run by local authorities, 6 per cent by the voluntary sector and the remaining 73 per cent by private companies. More children are being looked after by the private sector than ever before. Most providers own just one or two homes but the largest 20 providers own 37 per cent of all non-local authority children's homes.

Councils currently spend around £1 billion on residential care each year. Research undertaken on behalf of the government in 2014/15 found that the average weekly fee was £3,289, but the range was from £1,900 to £9,325.

Staff are paid poorly: 11 per cent of all staff are paid at or below the Living Wage Rate. Pay rates in the private sector are lower than in voluntary sector or local authority homes. Managers say that it is difficult to recruit staff, citing lack of qualifications and experience among applicants. Staff in privately run homes tend to work longer hours on average (38.6 hours a week) compared to local authority-run homes (33.9 hours a week).

A significant proportion of children's homes are run in order to make a profit. Some of these are owned by foreign private equity companies, specifically focused on financial gain. Laing Buisson, a market analyst, cites the following as some of the incentives for investors thinking about entering the 'children's homes market' in England (in 2013):

- Market size, £7bn in total;
- Funding sources, virtually 100 per cent public sector;
- Councils are protecting children's budgets, the brunt of cuts falling on older care;
- Public sector outsourcing, expanding as independent providers move into mainstream.

Some of the largest private providers of children's homes are: Acorn Care and Education Group, the Cambian Group, G4S (although during the course of the research, G4S announced that it is selling its children's services contracts), the Keys Group and the Priory Group.

Very little information is available about private providers of children's homes. It was not possible to access financial information for the Keys Group and the Priory Group.

In the financial year ending 31 December 2014, The Cambian Group's revenue increased by 12 per cent to £240.6 million. (This does not just include profits from children's homes.) That year, the Chief Executive Officer received a total remuneration package worth £9,439,053 (including a base salary of £450,000); the Chief Financial Officer received a £761,275 package (including a base salary of £225,000). Cambian was founded by GI Partners, a US-based private equity company, which is still the controlling

shareholder of the company. In 2014, Cambian merged with Advanced Childcare, which was, at that time, the largest provider of children's homes in the country; it was also owned by GI Partners. Research published by the Department for Education in 2013 revealed that one in three homes run by Advanced Childcare Limited had failed to be classified as 'good' or 'outstanding' by Ofsted.

Acorn Care and Education is owned by the Ontario Teachers' Pension Plan. Teachers' Private Capital, the private investment department of the Ontario Teachers' Pension Plan, is one of the world's largest private equity investors. In 2014, the pension fund's net assets had grown to CAN \$154.5 billion. Acorn's annual report and accounts are not readily accessible.

Data is not being recorded, collected or monitored

A request under the Freedom of Information Act 2000 was submitted to every police force in England and Wales asking them to provide the following information for financial years 2012/13, 2013/14 and 2014/15:

1. Number of times the police were called out to residential children's homes in the area covered by your police force by named children's homes; and
2. Number of arrests resulting from call-outs to children's homes by named children's homes.

Responses were received from all except one police force. All police forces reported difficulties in accessing and collating the requested information. Each police force differed in its recording systems and search capabilities, but the reasons given for incomplete results and for not complying with the request were broadly the same. These were:

- there were no identifiers on police systems for marking the incident as having occurred at a children's home, which meant that it was impossible to easily run searches for incidents at children's homes on electronic databases; and
- records relating to call-outs and arrests were held separately and it was not easy to cross-refer.

Data was received from a number of forces. It is not directly comparable because of the problems outlined above and the differences in the recording systems. Some figures will include call-outs for 'missing' or 'absent' children, others only data

Police Force	Number of children's homes included in figures	Police description of incident	2012/13	2013/14	2014/15	Total
Avon and Somerset	89	Calls where police unit was dispatched	220	601	592	1,413
Bedfordshire	30	Crimes recorded	38	71	104	213
Cleveland	22	Call-outs	879	777	1,048	2,704
Devon and Cornwall	67	Incidents attended	361	347	302	1,010
Kent	76	Incidents attended	796	863	974	2,633
Leicestershire	Unknown	Recorded incident	244	234	214	692
Lincolnshire*	7	Call-outs	167	159	176	502
Norfolk	38	Calls received	435	748	1,196	2,379
North Wales	42	Crimes	158	226	340	724
Nottinghamshire	47	Incidents attended		956	841	1,797
South Wales	23	Call-outs	29	36	39	104
Suffolk	23	Call-outs		82	200	282
Thames Valley	8	Incidents attended	146	180	313	639
West Mercia	118	Incidents	1,898	1,938	2,010	5,846
West Midlands	57	Incidents	2,478	1,614	1,733	5,825
West Yorkshire	Unknown	Crimes		193	217	410
Wiltshire	15	Call outs	Information not provided by year			More than 2,000

* This information was provided by Lincolnshire County Council and relates only to local authority owned children's homes, including one Secure Children's Home.

relating to reports of criminal behaviour. Many police forces were anxious to point out the difficulties they had extracting the data and to emphasise that the results they provided might be extracted from a number of sources and were only their best interpretation of data relevant to the request. The figures clearly show, however, that there is a very high level of police involvement with children's homes.

Lack of policies and protocols

Police forces were also asked for copies of any policies or protocols in place in their area that are intended to deal with policing and prosecution of children in residential children's homes. One police force provided a single-page policy which specifically dealt with offences committed by 'youths' in care homes and another had a '10 point checklist for offences in children's homes'. Staffordshire Police were able to refer us to 'A Joint Protocol (with Staffordshire County Council) to Reduce the Prosecution of Looked After Children' (and they informed us that that this was in the process of being updated). The majority of forces stated that there was no specific policy in place or declined to deal with the request.

There are high levels of call-outs from large private providers

Many police forces stated that they might be able to run the searches asked for in the above

request if they were provided with a list of names and addresses of children's homes in their area.

Given that most children's homes are legally obliged to register with Ofsted, a Freedom of Information request was submitted to Ofsted asking for a list of all children's homes currently registered with them. The following details were requested: Name of children's home; Address of children's home; Local authority area in which children's home is located; Name of owner of children's home; Whether children's home is owned and managed by a private company, the local authority or a charity/not-for-profit. Ofsted replied:

The Care Standards Act 2000 (Registration) (England) Regulations 2010 provides an extremely limited entitlement to access information that Ofsted holds about children's homes. The legislation specifically prohibits the disclosure to the public of the name, address and other identifying information about Children's Homes. We are therefore unable to provide this specific information to you as part of our response.

In light of this response, research into the names and locations of children's homes was focused on the five private children's homes providers

Provider	Number of children's homes covered by the data	Number of call-outs or 'incidents'* from 1 January 2015 to 31 December 2015
Provider 1	27	332
Provider 2	23	89
Provider 3	7	82
Provider 4	6	63
Provider 5	21	246

* Some police forces informed us that not all the incidents would have resulted in police attendance.

referred to above. Even with this reduced remit it was extremely difficult to identify children's homes owned by each provider. Most company websites contained little, if any, information and extensive searches on the internet yielded patchy and unreliable results. Addresses were linked to providers as accurately as possible.

This imperfect information (which included some residential special schools) was submitted to relevant police forces as part of a Freedom of Information request which asked for figures showing the number of call-outs to the listed children's homes from 1 January 2015 to 31 December 2015. The data should not be taken as definitive because of all the issues outlined before. However, it does illustrate the fact that the police are being called out regularly to children's homes owned by large private providers.

Legal and regulatory requirements

The Children's Homes (England) Regulations 2015

The Children's Homes (England) Regulations 2015, introduced in April 2015, were intended to improve care and outcomes for children living in children's homes. The government's *Guide to the Children's Homes Regulations including the quality standards* states:

The registered person should agree with their local police force, procedures and guidance on police involvement with the home to reduce unnecessary police involvement in managing behaviour and criminalisation of behaviours. Children should not be charged with offences resulting from behaviour within a children's home that would not similarly lead to police involvement if it occurred in a family home.

Ofsted

In January 2015, Ofsted announced that it would be implementing a 'tough' new inspection

framework on children's homes from 1 April 2015. Debbie Jones, Ofsted's National Director for Social Care, said:

Our new inspection framework aims to ensure that the most vulnerable children in our society are being well cared for and protected. It will assess whether children's homes are providing the best possible care, while improving children's life chances and helping them to successfully manage their lives as young adults . . . It is critical that those with the most complex needs are supported to have positive experiences and make progress.

When judging whether a children's home is of a 'Good' standard, the new framework directs inspectors to consider the following criteria:

Children and young people's behaviour is not unnecessarily criminalised. Careful, child-centred decision-making is made about reporting behaviour within the home to the police and placing authorities, though appropriate notifications are always made and clearly documented. Any risks are kept under regular review and there is effective liaison with the placing authority and other agencies such as the police, the host authority, school and family where appropriate.

The footnote to this section states:

It is recognised that, while children are recovering from abuse and trauma, their patterns of behaviour may change including placing themselves at increased other risks. It is expected that staff recognise and understand these patterns of behaviour and take appropriate steps.

Ofsted requires children's homes to complete a request for information form when it carries out a full inspection. The form covers a wide variety of information including a request for details of numbers of children missing from the home and incidents of restraint. It does not ask about the number of times the police have been called out to the home.

A random review was conducted of 10 Ofsted reports published between 1 May 2015 and 11 February 2016 on children's homes who identified themselves as providing services for children with 'emotional/behavioural difficulties'.

This review revealed that the question of police involvement with children was not routinely covered by inspectors. Several reports referred to police involvement in relation to missing children, some made no reference to police involvement whatsoever, and only one covered ‘staff work with external agencies to try and manage young people’s behaviour without criminalising them’.

Corporate parenting

When a child comes into care, local authorities take on the role of ‘corporate parent’. As corporate parent, local authorities have a statutory duty to safeguard and promote the welfare of the child who has come into care. There is a legal requirement on local authorities to co-operate with other organisations to help them meet their statutory obligations and on certain other bodies, including the police and probation services, to assist the local authorities in fulfilling these duties.

In 2013, the Minister of State for Children and Families, Edward Timpson MP (at the time Parliamentary Under Secretary of State for Children and Families), wrote to Lead Members and Directors of Children’s Services, telling them that he wanted local authorities ‘to have a real sense of parental responsibility for their (i.e. looked after children’s) outcomes. This concern should encompass their education, their health and welfare and their aspirations as they enter adulthood’.

It is clear that local authorities, the police and others are not meeting their statutory obligations to safeguard and promote the welfare of looked after children in many instances. Action needs to be taken to prevent the unnecessary criminalisation of young people in children’s homes. This is not just a moral responsibility; it is a legal requirement.

Lack of transparency

The Secretary of State for Justice, Michael Gove promised in 2013, during his time as Secretary of State for Education, that the quality, policies and locations of children’s homes would no longer “be kept a secret”. The government’s investigations following the Rochdale scandal had shown that lack of transparency was not protecting children – the gangs exploiting children were, Michael Gove said, the one group of people who seemed to possess information – but rather shielded the children from the authorities who should be helping them. It was, he said, creating an “out of sight, out of mind” culture, hiding the inadequacies and failings of children’s homes, preventing public debate and holding back improvements to care.

This research underlines Michael Gove’s comments. A lack of transparency, particularly in relation to private children’s homes, means that homes are not accountable, bad practices are hidden and children suffer.

About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison.

We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change.

Acknowledgement

The Howard League would like to thank Claire Sands, freelance researcher, for undertaking this research on its behalf.

A version of this report, including references, is available at: www.howardleague.org

the Howard League for Penal Reform

1 Ardleigh Road
London
N1 4HS

**t
e
w**

020 7249 7373
info@howardleague.org
www.howardleague.org
[@TheHowardLeague](https://twitter.com/TheHowardLeague)

Registered charity
No. 251926
Company limited by
guarantee No. 898514

ISBN 978-1-911114-03-1



9 781911 114031 >

ISBN 978-1-911114-03-1

2016