

Children in public out-of-home care: 21 years of policy

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Overview of trends and key policy questions

For most of this report I shall use the term ‘in care’, as that was the term in use at the start of this review period; it is still the term most commonly recognised (as in ‘children leaving care’ and ‘the care system’). In addition, some young people I have spoken with don’t like being referred to as a ‘looked-after child’ or, even worse, a ‘LAC child’. After all, ‘care’ – including to be cared about as well as to be cared for – should be what services to this particularly vulnerable group of children and young people are about.

For children who may need out-of-home care and those who come into care for short or longer periods, the rate of legislative change, ‘short-termist’ thinking and policy initiatives has been less than for some other groups. With the exception of The Children Act 1989, which is still the major legislation in England and Wales, and the Northern Ireland Children Order 1995 and Children (Scotland) Act 1995, which brought in similar changes, the change that has happened has mostly taken the form of guidance to improve practice standards and legislation to remedy gaps or bring in new governance arrangements. Change has generally been in a positive direction, with more resources being made available via a series of initiatives and pilots. In short, despite political and governance changes and many changes of minister, the direction of travel has been broadly positive, with several steps forwards. However, there have also been some steps backwards, especially for some of the most vulnerable children who most need a well-functioning care system.

There is a sense in which the past 21 years have provided yet more examples of the post-war debate across the developed world about the role of the care system in supporting families and protecting children from harm. For that reason, I will go back briefly to the trends, debates and tensions that developed in the 40 years before 1987 and have continued since. Broadly, these interlocking policy questions are as follows:

- What should be the size of the ‘in-care’ population? Is care seen as something to be avoided (generally the case in the USA, Australia, Canada and the UK for much of this period). Or, as in much of Europe, is it an important part of child and family welfare services? The statistics show that the threshold for coming into care has changed over this period, with rates in care going up and down. There were over 74,000 children in care in England in 1984. The figure had dropped to 55,532 by 1992 but rose to over 60,000 in 2005.¹
- What is the role of the state? Should it concentrate on ‘rescuing’ children without anyone to care for them or who have been harmed by inadequate or abusive parents? These were the main roles for the care system before the outbreak of the second world war and returned to with the Children Act 1975 (in England and Wales), which imported from the USA permanence policies and time limits before children should be considered for non-consensual adoption. Or should it be an essential part of the service to help parents and children experiencing temporary or long-term difficulties (as legislated for in the Children Act 1948, section 1 of the Children

and Young Persons Act 1963 and the family support provisions of the 1989 Act)?

- Linked to this, are parents generally seen as trying to do their best for their children and encouraged to work voluntarily with social services and other agencies (the ‘partnership’ principle in the 1948 and 1989 legislation)? Or are they seen as people who are to be blamed for failing their children and therefore to be ‘judged’ by the formal child protection system and the courts as exposing their children to ‘significant harm’?
- Are children (and especially those in their middle years and adolescence) citizens with rights to be protected from harm and who can play a positive role in their own futures and in shaping the services they receive as they get older (as in the UN Convention and the 1989 and 2004 Acts)? Or are they to have their needs professionally assessed with little say over what is best for them, and viewed as troublesome individuals and gangs to be controlled and punished because of the threats they are perceived to pose to society?
- Should legislation for children who need to be placed in public out-of-home care be specific to them (as with the 1948 Act and the Children and Young Persons Bill 2008)? Should it be part of legislation that includes all children who may need care at some time in their lives (as with the 1963 and 1989 Acts)? Or should it be included in general legislation and guidance concerning all children (as with the Children Act 2004, which followed the *Every Child Matters* Green Paper)?
- Who has most influence on policy for children in care? Is it public opinion influencing politicians, as with the post-war wave of sympathy for evacuees and their parents who had come through the traumas of war, and the swing toward protection and rescue when a particularly horrific case is reported of parental or institutional abuse? Is it the influence on politicians of resource constraints, competing with the recognition that it is expensive to provide good care to vulnerable children? Is it the researchers and practitioners who provide evidence of ‘what works’, as with the provisions of the Children Act 1989, which were greatly influenced by the *Messages from research* reports?² (A good example of that was the research by Jean Packman and colleagues that emphasised the positive impact of ‘voluntary care’ on parents under stress and led to the accommodation provisions in the Children Act 1989 and a drop in the proportion

of care orders.)³ Is it auditors, the move away from inspection entirely by professionals and the increasing use of targets that can more easily be measured in Performance Assessment Framework reports and Joint Area Reviews? Is it civil servants, anxious to find policies that fit with the known views of the latest minister, as with the many initiatives we have seen since 1997?

These themes are in different ways and combinations reflected in legislation, policy documents and in the size and characteristics of the care population.

Policy and legislative developments

The first point to make is that it is not easy to discern major differences between the political parties with respect to children in care. In 1988, the Conservative Government had been in power for nearly a decade, but for much of this period there was broad consensus, as clearly demonstrated in the Select Committee (Short Committee) report of 1984⁴ that neither ‘prevention’ policies (ie preventing children coming into or remaining in care because of delinquency or abuse) nor ‘rescue’ policies (ie speedy decision making and more adoptions from care) were working in the interest of vulnerable children. A rebalancing was needed to allow for more family support services (including short-term accommodation and ‘shared care’ for children whose families were under stress), alongside a continuation of out-of-home care, including adoption, for those who really could not remain with or retain close links with their birth families.

The Children Act 1989 therefore resulted from a political consensus and came at the end of what was arguably the period when practitioners and researchers in the voluntary and state sectors, most with backgrounds in social work, had most impact on policy for children who may be in need of care. The first two of the widely disseminated Department of Health-funded Messages from research overview reports (*Social work decisions in child care* in 1985 and *Patterns and outcomes in child placement* in 1991) greatly influenced the detail of the Act and, through UK representatives on the international scene, the UN Convention on the Rights of the Child.

It could be argued that the small degree of change in the key legislative provisions for children in care since 1989 is due to this legislation so closely mirroring the requirements of the UN Convention. It is only recently that policy on children in care in Scotland and Wales (and to a lesser extent Northern Ireland) has diverged in any marked way from the policy directions in

England, and the trends and tensions noted above are present in all four countries, even though the timing of the policy swings is slightly different.

It was as a result of The Children Act 1989 that the rights of both children and parents were strengthened, through representation in care proceedings and the requirement that their views should be sought and due regard given to their wishes and feelings when decisions about care and placement were taken. Voluntary care (renamed ‘accommodation’) was to be one of the family support services that should be considered before a court could conclude that the child needed the protection of a care order.

Two other points need to be made about the 1989 Act. First, with respect to disabled children, it had elements of earlier ‘the state knows best’ days, in that the broad range of arrangements made by parents and voluntary organisations for disabled children (often not well regulated, but at times highly satisfactory) were to be regulated in the same way as for all children cared for away from home. All respite care for disabled children was brought under the ‘accommodation’ provisions of the 1989 Act. This led to a slight increase in numbers ‘looked after’ following the Act’s implementation in 1991, although children placed in a ‘series of short-term placements’ (usually disabled children needing a shared care service) were left out of the statistics.

Second, a major consequence of the legislation (which in my view is still having a negative impact on vulnerable teenagers) was that committing an offence was no longer grounds for a care order unless it could be shown that this was only one symptom of the child ‘suffering significant harm’ attributable to parental fault and that a care order was necessary to safeguard the young person’s welfare. There was much to commend this provision, had it been better tailored to individual needs. At the time, and over the next 20 years, there was discussion of provisions for youth courts to refer a convicted young person to family proceedings courts so they could decide whether a care order would safeguard the child’s welfare better than a custodial sentence. In the end this did not happen, and the removal of this group of young people from the care system and the statistics is one of the reasons why numbers in care dropped appreciably after the 1989 Act. Because ‘in care’ data are historical, with many who came into care when young still being there as teenagers, the results of this can be seen more clearly in the age profile of those entering care – from around half aged 10 or over and 9 per cent aged 16 or over in 1984, to 46 per cent aged 10 or over but only 4 per cent aged 15 or over in 2006.⁵

Although it was not the intention of the legislators that the social services should move away from providing accommodation or care for vulnerable teenagers (indeed, the Act requires that local authorities must provide accommodation if the welfare of a young person aged 16 or 17 would be seriously prejudiced if he or she is not accommodated), the evidence is that social services departments backed away from providing services, especially out-of-home care, to young people aged 15 and over. The exception was unaccompanied asylum seekers, without whose presence the drop in over 15s entering care would be even more marked. One well-meaning part of the 1989 Act accelerated the tendency of services under increasing resource pressures to avoid accommodating teenagers who were homeless or otherwise ‘in need’. There was provision for children who left care after their sixteenth birthday to receive continuing support post-18, which was strengthened by the Labour Government’s Children (Leaving Care) Act 2000. The legislation also removed social security benefits from children under 18 – increasing the financial costs on local authorities of maintaining children in care, some of whom had previously claimed unemployment benefits. Thus, although these provisions greatly helped teenagers who were actually in care, those who might have benefited from being looked after were turned away and were more likely to find themselves vulnerable to a custodial sentence through homelessness and associated criminality.

The period of the Conservative Government after the implementation of the 1989 Act saw the development of policies and guidance intended to improve the quality of care, but a series of reports on abuse of children in residential care reinforced the existence of a ‘residual’ policy of ‘keeping them out at all costs and discharging them as soon as possible’. An opposite (and more powerful) trend resulting from publicised abuse scandals saw the reversal of the initial drop in care proceedings encouraged by the 1989 Act. (The proportion of children entering care on a care order rose from about 20 per cent in 1974 to 36 per cent in 1990, just before the 1989 Act was implemented. In the first six months after implementation, the proportion went down to 16 per cent entering care on a care order, but it went up again to 33 per cent in 2000 following a succession of high-profile child protection cases.)

With the arrival of the Labour Government in 1997, the generally pessimistic view of the ability of the state to be an adequate parent and the drive to reduce numbers coming into care continued. A high-profile response to the Utting⁶ and Waterhouse⁷ reports on abuse in children’s homes (a policy spearheaded by

Tony Blair⁸ was to commission a review of adoption services in order to increase adoptions as a route out of care, even though the concerns that triggered these reports were about older children in residential care who were highly unlikely to be adopted.

The number of children and young people on care orders continued to rise with the risk-averse climate, and fed into the existing emphasis on ‘keeping them out’ of care and ‘getting them back home quickly’ in order to demonstrate progress in keeping the numbers down. The aspirations towards closer partnership working of the shared care and ‘accommodation as part of family support’ sections of the 1989 Act were never realised. Evidence built up in practitioner accounts and research reports of children kept out of care until court orders became necessary, or returned home too quickly, only to be further maltreated (so-called ‘oscillators’ or ‘yo-yo children’).

However, this somewhat defeatist attitude (that the only solution to the problems of care was to keep children out) started to be reversed when the policy emphasis on preventing social exclusion led to children in care and leaving care being identified as a group needing more focused attention. Resources and skilled professional time went into improving services following the *Quality Protects* initiative in 1998, and some of the more sensitive government-imposed targets (eg reducing the proportion of children who experienced three or more placements in a year) started to show results. The *Choice Protects* initiative in 2002 saw another move forward, in that it recognised that attention placed on adoption as the preferred placement had, in some authorities, been at the expense of improving standards in short-term and long-term foster care and in residential care. The benefits of kinship foster care were recognised and this became a preferred placement, a move emphasised by the fact that placement with kin is the only preferred placement in the Children and Young Persons Bill 2008.

A countervailing pressure to the focus on children in care as a special group was to be seen in the *Every Child Matters* (2004) Green Paper. The mantra of politicians that children admitted to care almost all did very badly (as evidenced in the preface to the White Paper and in the press releases accompanying *Care Matters* in 2007) was not justified by the more nuanced evidence from research and from care leavers themselves. Although there was a need for improvement, especially for those entering care when already experiencing difficulties, the message from research and practice was that most children entering care did better than similar children

remaining at home, and that those who stayed longer tended to do better.⁹

Increased emphasis on educational achievement as the outcome measure, especially after children’s social services moved from the Department of Health to the Department for Education and Skills in 2002, fed into this belief that the care system was failing, since the figures did not take into account that many children entered care precisely because they were failing in school or already excluded. However, monitoring the school performance of children in care and leaving care did lead to the appointment of specialist school staff to help them; to the proposals in the Children and Young Persons Bill 2008 for a ‘virtual head teacher’ for children looked after in each local authority and priority for admission to the best-performing schools; and to a recent change of mind to specifically require individual schools to co-operate with planning for vulnerable children, including those in out-of-home care. The Children and Young Persons Bill 2008 again concentrates on children in care, with welcome provisions to ensure that children well settled with foster families can remain ‘part of the family’ as they move into adult life.

The policy directives in the Ministry of Justice’s *Public law outline* (2008) to reshape the way care proceedings are handled is an attempt to ensure that only those needing to enter care through the compulsory route do so. This may be a more positive way of reducing the numbers in care, returning as it does to the aspirations in the 1989 Act and the UN Convention to encourage the voluntary co-operation of parents, older children and other family members. The move is most likely to be positive if savings on costly court cases are reinvested in shared care facilities, therapeutic foster care and the other moves forward resulting from the *Choice Protects* initiative. (The parallel funding of more family group conferences should improve the chances of this being a positive move.) Short breaks care for disabled children has been given a large boost in funding by the *Every Disabled Child Matters* proposals.

However, there are some worrying forces pulling in the opposite direction, which could disadvantage children needing out-of-home care. The fact that the 2004 Children Act (which implemented the mainly organisational changes proposed in *Every Child Matters*) integrated services for children in care with provisions (and budgets) for all children worryingly increases the risks that their special needs will not be recognised through special provisions and earmarked resources. With the introduction of children’s trust

arrangements and pooled budgets following the 2004 Act, the high proportion of expenditure on children in care (especially those in residential care) has been noted by some of the newly appointed directors and commissioners. Some national and local policy makers have made the case that increased funding for preventive work could be made available by decreasing the funding for children in care. Although better preventive and support services have the potential to reduce the need for children to be placed away from home, it is by no means clear that the stresses in society (including parental drug use, mental illness and intimate partner violence) are going to decrease. In any case, a ‘robbing Peter to pay Paul’ mindset of taking resources from those currently in care to avoid some in the next generation coming into care should not be an acceptable way forward. Evidence from practitioners and researchers identifies cases in which some young people have been moved against their wishes (and contrary to their needs) from expensive residential or specialist foster care placements, such moves being justified by assertions that their needs can be better met ‘in house’ by the new integrated services or by ‘better’ commissioning arrangements.

Since 1987, the boundaries between care and custodial provision have become more entrenched, despite the Commission for Social Care Inspection/Ofsted’s commitment to regard young people in custody as ‘children’ for the purposes of inspecting their welfare and safeguarding their needs. It is only with the advent of shared ministerial responsibility (through the setting up of the Department for Children, Schools and Families and the Justice Department in 2007) and the discussion around the latest youth justice proposals and the parliamentary debates on the Children and Young Persons Bill, that there has been more scope for bringing the two services together. However, the proposals in the Youth White Paper (2008) indicate that this is another opportunity that is going to be missed to transfer the Youth Justice Board’s custody budget to local authorities. To do this would remove a ‘perverse incentive’ for local authorities to deny accommodation and a package of other support and therapy services to young offenders with complex needs. As things currently stand, if they go into custody there are no costs to the local authority.

Finally, going back to my list of policy themes, there is the question of influences on policy for children needing out-of-home care. Researchers and practitioners providing data on processes and outcomes had a notable impact during the

Conservative years and the early years of New Labour – the Children (Leaving Care) Act 2000, the *Quality Protects* and *Choice Protects* initiatives and the re-emergence of stable long-term foster care and kinship care as positive options being examples. Professionals and the young people in care themselves have called attention to the need for increased continuity of social workers and there is a rather surprising (and very welcome) degree of consensus among politicians of all parties that social workers (including independent reviewing officers tasked to provide an independent voice) are essential to improved outcomes for children in care. It is recognised that they need better support and training to go alongside the greater accountability following from the requirement to be registered with the General Social Care Council (another positive New Labour move as part of the Care Standards Act 2000).

However the marketisation, targets and increasing standardisation of data collection (as evidenced by the burdensome and undifferentiated Integrated Children’s System) has taken social workers away from helping children in care and their parents and carers, and arguably contributed to social worker turnover. This has provided the justification for the experiment of independent Social Work Practices¹⁰ taking over responsibility for social work services to children in care, to be piloted following the implementation of Section 1 of the Children and Young Persons Bill 2008.

Conclusions: looking back and looking forward

Despite a measure of stability in actual legislative provision over the past 21 years, services for looked-after children have not been immune to short-termism and experimentation, especially during the period of the New Labour Government. The commitment to reduce child poverty and social exclusion, alongside the strong media response that ‘something should be done’ following the death of Victoria Climbié and the Laming report¹¹ led to an uneasy compromise (in *Every Child Matters*) between improving universal services and strengthening specialist ‘targeted’ services for the most vulnerable, including those in need of out-of-home care. It remains to be seen whether amalgamating all local authority children’s services under one roof and putting a large part of the available resources into generally available services such as Sure Start and ‘extended schools’ will have a more positive than negative impact on services for this most vulnerable group of children. The advantages of a more collaborative approach between professionals will be lost if structural change

also results in a reduction (both in terms of specialist staff and budgets) in the already inadequate resources available to children in care or on the edges of care.

The more recent policy move towards decentralisation, including as it does the ending of 'ring-fenced' budgets (which did much to improve the services for young people leaving care), has coincided with the case-related evidence mentioned earlier of teenagers in care being moved from more expensive to less expensive resources under the guise of preventing out-of-county placements. There is also concern that the end of ring-fenced budgets will reduce the resources available for post-qualifying social work training, which is essential if services to looked-after children are to be maintained and improved.

So, in summary, the last 21 years has seen continuity and gradual improvement in the services for children who may need out-of-home care, which started with the post-war political consensus. The congruence between the UN Convention on the Rights of the Child and the 'looked-after' provisions of the Children Act 1989 has to some extent protected children coming into care from too much short-termism, and no major legislative change has impacted on the essential character of these services. There have been several steps forward from the 1989 Act (such as the Children (Leaving Care) Act 2000), culminating in the many positive provisions of the Children and Young Persons Bill 2008. Despite this, some initiatives have taken us down blind alleys and some have been wasteful of resources that would have been better used if they had been integrated into mainstream local authority provisions and budgets for children in care. Sadly, opportunities have not been taken to look again at those young people who have offended but who could have had their needs better met by a child welfare

service, including accommodation or court-ordered care. For this group, Scottish legislation, as with much of Europe, is still ahead of the provisions in England, Northern Ireland and Wales.

For children who are themselves or whose home circumstances are so troubled that they may need out-of-home care, there are no quick fixes, especially for those who have been already harmed by trauma or neglect. If there were, they would have been discovered by now. Both Labour and Conservative governments over the last 20 years, but especially New Labour, have taken too long to heed the lessons from research that led to the 1989 Act. They have spent too much energy on initiatives and expensive pilots that are unlikely to be rolled out for the majority, and diverted too many resources from continuing to make steady progress for all children in care or who may need care.

The research evidence to support the balance struck by the 1989 Act has been available for the past 21 years and its conclusions are supported by more recent research. Had this been heeded and had there been fewer resources put into expensive pilots and less 'quick fix' thinking, there would have been more steady progress for children in care. It is likely that numbers experiencing short periods of care as part of family support would have gone up, but there would have been smaller numbers needing long-term care. More emphasis at an earlier stage on stability of foster carers, and also on stability of social workers for children in long-term care, could have led to better outcomes. Much of what is good in the 2008 Bill could have been put in place since 1987. The evidence from practice and research, and from the children themselves, has long been there to show policy makers and budget holders what needs to be done to improve outcomes for children in care.

Endnotes

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as long as it takes