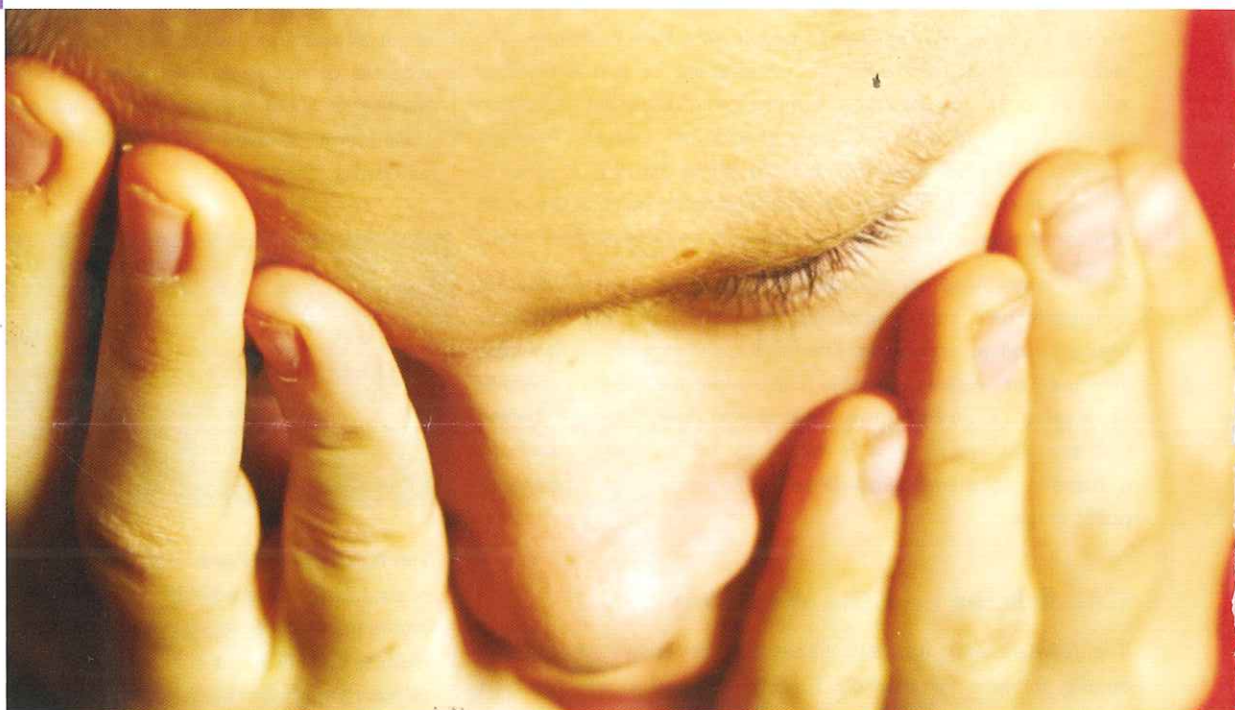


# The criminalisation of looked-after children

Janis Cauthery  
JP discusses  
a problem  
of local  
authority care



**Magistrates who sit in the youth court all too often see young people coming before them who are looked-after children. They frequently attend court without an appropriate adult; if a careworker does attend, they sometimes know little about the young person.**

There have been cases when there is no key worker, no social worker and no information to tell us about the child's background, health etc. There are examples of children being moved to another home without important medication and appropriate hand-over details. It sometimes appears that the treatment these young people have received has contributed to their behaviour.

There are also examples of young people being repeatedly moved from one care home to another, and sometimes it would appear that this is a way of dealing with their challenging behaviour. Many children in care are placed a long way from their families. When they are moved it can be difficult for them to maintain contact. This can sometimes be detrimental to the young person. Some towns have such a large number of children's homes that the youth courts can seem full of young people that reside in a children's home. The young people are still the responsibility of the local authority from whence they came – the local authority is the 'parent' of that child and has the responsibility. It is rare for a social worker from out of the county to attend court with a youngster, even when he or she is facing a custodial sentence.

We appreciate that some of these children may be difficult to look after. Some of them will have come from situations where there may

have been deep-rooted issues of abuse and neglect. The treatment that they have received can often then manifest itself in bad attitude, bad behaviour or other potentially criminal actions and can, in some cases, lead to mental health problems. Bringing up children can at times be extremely challenging, but surely we owe it to these already disadvantaged children to offer them the best care and understanding that is possible. We realise that the careworkers have a very challenging job, sometimes having to deal with very difficult and disturbed children, but we hope that they have sufficient training to know how to handle these situations which can so easily escalate.

## Does this need to come to court?

As youth court magistrates we must always bear in mind that 'the welfare principle is fundamental to the work of the youth court.' Many of the young people we see coming to court have never been in trouble before going into care. These young people are often charged with offences that have occurred within the care home, including criminal damage (eg to a door, window, or crockery) and assault (often on one of the carers involving pushing, shoving). This behaviour is mostly at the lower end of offending, and in a reasonable family environment would never be dealt with by the police or courts. We worry about these children being criminalised. Surely the home has a duty to try and help the young people and find other solutions rather than resorting to the courts, for minor offences which, in a normal family environment, would not be thought of as offending behaviour.

There is some work taking place at the moment by the Department for Education, looking into how children are looked after in care homes. The steering committee have also looked at the issues that

have been raised by magistrates. It is hoped that some guidelines will be produced for the care homes.

Some very good research has recently been done by the University of East Anglia and the Adolescent and Children's Trust. More information and the full research report, *Looked after children and offending: reducing risk and promoting resilience*, are available to download here: [www.tactcare.org.uk/news.php?show=press&id=247](http://www.tactcare.org.uk/news.php?show=press&id=247)

There are some interesting recommendations in this report. I really hope that these recommendations will be looked at very seriously and taken up wherever possible. As magistrates we should also remember that we already have the power, if we are unhappy about a particular case where the young person is a looked-after child, to ask the director of children's services to come to court to explain why the young person is being treated in this way. We can also adjourn a hearing to require a parent or guardian to attend court, and this includes the corporate parent (the local authority).

### Legislation and guidance

The Children Act 1989 sets out the role the local authority must play in ensuring the young person within their jurisdiction is safeguarded. The local authority is corporate parent to all looked-after children and so should ensure that the children are afforded every opportunity to succeed. The young people should not be disadvantaged because they are looked after by the state.

The associated *Children Act 1989 Guidance and Regulations: Volume 2: care planning, placement and case review* contains reference to the risk

of looked-after children being unnecessarily criminalised, and notes the necessity for local youth justice, police and childcare services to work more closely together using protocols wherever possible.

From 1 April 2011, local authorities have been required to have a nominated officer (a senior manager within the authority) who is responsible for reviewing and approving all out-of-area placements. The CPS also has a code for prosecutions which they must apply when deciding whether or not to charge a young person. When considering whether to charge a looked-after child, the CPS must also take account of their youth offenders' legal guidance in relation to offending behaviour in the children's home.

The *National Crime Recording Standard* is followed by the police. It rules that police should record every reported incident of crime where the balance of probabilities seems to suggest that a crime has been committed. Incidents in children's homes are not exempt from this. Interestingly enough, when an incident of a similar nature is reported by a headteacher of a school because of NCRS guidance, this does not have to be formally reported.

Finally, the MA Youth Courts Committee would like magistrates to inform them if they have examples of inappropriate cases coming to court where the young person is a looked-after child – see page 14 for more on this. We are determined to help put a stop to these young people being unnecessarily criminalised.

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