



'I never left care, care left me':  
ensuring good corporate parenting  
into adulthood

***A briefing paper for peers on proposed amendments to  
the Children and Families Bill 2013***

October 2013

# Contents

Introduction and Summary of Amendments	2
Chapter One: Getting the Children and Families Bill Right for Care Leavers	5
Chapter Two: Extending the Care Leaving Age (Amendments One to Four)	10
Chapter Three: Enabling Looked After Children to Hold Local Authorities to Account (Amendment Five)	21
Chapter Four: Further Amendments to the Children and Families Bill 2013 Supported by the CSJ	28
Chapter Five: Conclusions	30

# 'I never left care, care left me': ensuring good corporate parenting into adulthood

## ***A briefing paper for peers on proposed amendments to the Children and Families Bill 2013***

### INTRODUCTION AND SUMMARY OF AMENDMENTS

This paper scopes out how amendments can be made to the Children and Families Bill 2013 at the House of Lords Committee and Report Stages. Its starting point is that the Government should seek to raise the care leaving age in practical terms so that the accommodation and support young people exiting care receive is more akin that which other young people experience. Care should reflect, as closely as possible, normal family life – this should be the same for children entering adulthood or for younger children. An opportunity for the inclusion of game-changing provisions is still available. We urge all peers to support the amendments called for here.

This report is one part of a larger body of work currently being undertaken by the Centre for Social Justice (CSJ) about the outcomes of care leavers. Its focus is largely confined to areas where statutory changes could help to provide improved outcomes, with other issues such as leaving care planning and employment support being discussed in future work. It also builds on previous work by the CSJ, calling for an improved legal context for looked after children, which enables them to enforce the rights all other children enjoy.

The amendments proposed below are a vital contribution to achieving these goals. If passed, they constitute crucial first steps to improving the outcomes of care leavers.

1. Extend the care leaving age by including the right to:
  - Remain with a former foster carer until 21 (Amendment One);
  - Remain in a former residential home until 21 (Amendment Two);
  - Obtain another type of supported placement until 21 (Amendment Three); and
  - A guaranteed return to foster care or residential care for those who leave care before 18 (Amendment Four).
  
2. Enable looked after children to hold local authorities to account:
  - Section 8 orders such as prohibited steps orders and specific issue orders made available to all looked after children and care leavers, so that existing legislation intended to improve outcomes for looked after children and care leavers is implemented by local authorities (Amendment Five).

We see these proposals as the first steps in extending the care leaving age so that young people can leave care when they are ready and return should they need to, just as the majority of young people who are not in care can. The longer these changes to statutory provisions are left the more young care leavers will be forced to make the journey to adulthood alone.

## Proposed Amendments

The five amendments proposed by the CSJ are as follows:

### Amendment One: Staying Put

This amendment amends the Children Act 1989 to allow young people in foster care to remain with their foster carers until at least the age of 21 – **see page 13**. (This has already been tabled by the Earl of Listowel.)

### Amendment Two: Remaining in Residential Care to 21

The following amendment amends the Children Act 1989, to allow young people in residential care to remain in their residential facility until at least the age of 21 – **see page 14**.

After section 23C (5) Children Act 1989, (continuing functions in respect of former relevant children) add new sub-section 5D:

(5D) (1) The assistance given under sub-section 4(c) shall include accommodation within a former residential facility:

unless:-

- (a) the former relevant child states that he does not wish to reside in such accommodation, or
- (b) the former residential facility does not wish to continue to provide such accommodation.

'Residential facility' may mean care home or other e.g. residential school.

### Amendment Three: Supported Placements to 21

The following amendment amends the Children Act 1989, to provide young people leaving care the resources to remain in a supported placement until at least the age of 21 – **see page 17**.

After section 23C (5) Children Act 1989, (continuing functions in respect of former relevant children) add new sub-section 5E:

(5E) (1) The assistance given under sub-section 4(c) shall include accommodation in a supported placement unless the former relevant child states that he or she does not wish to reside in such accommodation.

Supported placement may mean: foster care, community home, semi-independent accommodation (accommodation with on-site support staff), supported lodgings (room within a home with support provided by a host), or any other appropriate.

### Amendment Four: The Right to Return to Care

The following amendment amends the Children Act 1989, to allow 'relevant' young people to return to foster care or residential care – **see page 20**.

After section 23B (8b) Children Act 1989, additional functions of the responsible authority in respects to looked after children amend subsection (8b) as follows:

23B (8b) providing him with or maintaining him in suitable accommodation; including allowing him to return to a foster care placement, residential care placement or any other appropriate if the child expresses such a wish.

## Amendment Five: Opening up section 8 orders

The following amendment amends the Children Act 1989 to open up section 8 orders to looked after children – **see page 26**.

In the Children Act 1989, remove section 9 subsection 1:

1) No court shall make any section 8 order, other than residence order, with respect to a child who is in the care of a local authority.

We are also supporting three other amendments being championed by other organisations that could improve outcomes for care leavers. These are briefly outlined in Chapter Four.

## CHAPTER ONE

### Getting the Children and Families Bill Right for Care Leavers

#### 1.1 Slipping through the cracks

##### The Care Leaving Population

- There are 68,110 children in care – about 0.6 per cent of all children under 18;<sup>1</sup>
- One in five looked after children are over 16;<sup>2</sup>
- 62 per cent are looked after because of abuse or neglect;<sup>3</sup>
- Over one in ten 16 and 17 year olds in care have a substance misuse problem;<sup>4</sup>
- More than one in ten over 13s in care have been given a final warning or been reprimanded by the police;<sup>5</sup> and
- Almost half of care leavers' emotional and behavioural health was rated 'borderline' or 'cause for concern'.<sup>6</sup>

##### Leaving care: as set out in the Children (Leaving Care) Act 2000

'Eligible' (16-18): At least 3 months before their 16<sup>th</sup> birthday a young person must be given a 'personal adviser' and a 'pathway plan'. The pathway plan sets out what help the local authority will give them on leaving care, and should include where they will live and their education or employment plans. The personal adviser should take over the role of a social worker, providing support and guidance as well as a contact in an emergency.

'Relevant' (16-18): At 16 a young person becomes eligible to leave care, if they choose to do so they become a 'relevant' young person. The local authority must provide assistance for accommodation and living costs, as well as a personal adviser.

'Former relevant' (18+): On their 18<sup>th</sup> birthday all young people officially leave care and become 'former relevant'. The local authority must: attempt to keep in touch with the young person; provide a personal adviser; and provide assistance towards education and employment costs, but not necessarily housing support. If the young person is in higher education the local authority must provide accommodation during holidays and if he or she wishes to return to education the local authority must assess needs, and if appropriate, appoint a personal adviser.

---

<sup>1</sup> Department for Education, National Statistics, Children looked after in England including adoption, London: DfE, 2013

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> Department for Education, National Statistics, Outcomes for children looked after by local authorities in England: 31<sup>st</sup> March 2012, London: Department of Education, 2012

<sup>5</sup> *ibid*

<sup>6</sup> *ibid*

Leaving home and making the transition to adulthood is stressful and challenging for all young people, it is a time when parental support is paramount. Yet every year roughly 10,000 young people, who have experienced the most challenging and traumatic childhoods of any in our society, make this journey largely alone.<sup>7</sup> With no home to return to and little support provided, it is unsurprising that care leavers struggle to reach their full potential both academically and vocationally.

- Only 14.6 per cent of children in care achieve five GCSEs A\*-C including maths and English, compared to 58.1 per cent nationally;<sup>8</sup>
- At the age of 19, only six per cent of care leavers are in higher education, compared to 49 per cent nationally;<sup>9 10</sup>
- One quarter of young people who are not in education, training or employment (NEET) between the ages of 16 and 18 for more than 6 months are either in care or are a care leaver;<sup>11</sup> and
- Care leavers are roughly twice as likely to be NEET at 19 than the rest of the population.<sup>12 13</sup>

Beyond this care leavers are also much more likely to experience extremely poor outcomes in their adult lives. Despite making up less than one per cent of the population, care leavers are disproportionately represented in almost every vulnerable group, from prisoners to sex workers and problem alcohol users.

- It is estimated that between 15-25 per cent of homeless people were previously in care, with the number of care leavers accessing homelessness services having increased since 2008;<sup>14</sup>
- 24 per cent of the adult prison population has been in care;<sup>15</sup>
- As many as 70 per cent of sex workers are estimated to have been in care (see case study below);<sup>16</sup>
- 11 per cent of care leavers are problem alcohol users compared to seven per cent of the population;<sup>17</sup>

---

<sup>7</sup> Department for Education, National Statistics, Children looked after by local authorities in England including adoption, London: DfE, 2012

<sup>8</sup> *ibid*

<sup>9</sup> Office for National Statistics, Participation in Higher Education, London: ONS, 2013.

<sup>10</sup> Department for Education, National Statistics, Children looked after in England including adoption, London: DfE, 2013

<sup>11</sup> Audit Commission, Against the odds Re-engaging young people in education, training and employment, London: Audit Commission, 2010, p.20

<sup>12</sup> Department for Education, NEET Statistics – NEET statistics: quarterly brief - quarter 2, 2012 [accessed via: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/230393/Quarterly\\_Brief\\_NEET\\_Q2\\_2013\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230393/Quarterly_Brief_NEET_Q2_2013_FINAL.pdf) (viewed on 19/09/13)]

<sup>13</sup> Department for Education, National Statistics, Children looked after in England including adoption, London: DfE, 2013

<sup>14</sup> See: Homeless Link, Homeless watch, London: Homeless Link, 2010 and; Centrepont, The changing face of youth homelessness, London: Centrepont, 2010.

<sup>15</sup> Ministry of Justice, Prisoners' childhood and family backgrounds Results from surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners, London: MoJ, 2012

<sup>16</sup> Home Office, Paying the Price: A Coordinated Prostitution Strategy; London: Home Office, 2006

## Care Leavers and Sex Work

Female care leavers have shocking rates of representation in sex work; in 2004 the Home Office estimated that 70 per cent of sex workers had previously been in care.

One25 is a Centre for Social Justice Alliance charity that provides grassroots support to sex workers in Bristol through their outreach program, drop-in centre and case work. Last year their drop-in centre received 1800 visitors. Gill Nowland, CEO of One25, told us that their experience of working with sex workers correlates with the Home Office statistics.

She also told the CSJ that whilst there were good examples of local authority interventions when they reported very young (under 18) care leavers involved in sex work, there was unlikely to be any support after this age. One25 have found that leaving sex work can also be more difficult for women who have been in care, as they have few family relationships that can be rebuilt. They see problems being perpetuated to the next generation, with women in sex work being very likely to have their own children taken into care.

It must be acknowledged that a key part of the explanation for these adverse outcomes stems from the experiences of looked after children before they enter the care system; 63 per cent of looked after children in care because of neglect or abuse. However, poor outcomes should not be seen as inevitable. Care leavers, as a group, are most likely to need the most support to overcome early adversity, yet at present they often receive the least.

## 1.2 The price tag of lost potential

Whilst the human cost of this missed potential should be enough to motivate action, society also shoulders significant financial costs as a result of poor care leaver outcomes. It is estimated that every young person who is NEET between 16-18 will cost the Government £160,000 in extra welfare payments and opportunity costs such as missed tax and national insurance contributions.<sup>18</sup> Given that in 2011 900 looked after young people were NEET at 16,<sup>19</sup> this single cohort of care leavers will cost the Government £144 million over the course of their lifetimes.

However calculating the cost of care leavers simply in terms of unemployment underestimates the extent of the problem. Costs will also be accrued in criminal justice interventions, adult social services, worse health outcomes and the increased likelihood of their own children being taken into care. The University of York estimated that a care leaver

---

<sup>17</sup> Centrepont, The changing face of youth homelessness: trends in homeless young people's support needs. London: Centrepont, 2010

<sup>18</sup> Audit Commission, Against the Odds, London, Audit Commission, 2010 p16

<sup>19</sup> Department for Education, National Statistics, Outcomes for children looked after by local authorities in England: 31<sup>st</sup> March 2012, London: Department of Education, 2012

who has a 'negative journey' could cost the state £337,204 over the course of his or her lifetime.<sup>20</sup>

These outcomes and costs are by no means inevitable. Successive studies have shown that intervention post-care can save the state significant amounts of money. The University of York's study found that care leavers' cost to the state could be halved by providing relatively modest interventions such as help to access training and increased advice from personal advisers. Similarly, a study of care leavers in the US showed that for every dollar spent on extending foster care, two dollars will be saved by better outcomes.<sup>21</sup> As Professor Mike Stein puts it:

***'Being a 'good parent' is not cheap but the longer term costs associated with poor parenting and outcomes - both personal and financial - are far greater.'***<sup>22</sup>

### 1.3 Time for Action: The Children and Families Bill 2013

We cannot afford to continue allowing care leavers to face such extreme difficulties in adulthood. If the Government is to fulfil its duty as a good corporate parent then it must take action now to support care leavers better. The issue of care leavers has been on the agenda for some time – in 2007 the Care Matters: Time for Change white paper extensively exposed the inadequacy of current leaving care provisions.

The White Paper paved the way for some important progress in the Children and Young Persons Act 2008, by:

- Extending the provision of personal advisers and furthering assistance for care leavers returning to education up to the age of 25;
- Stating that young people should not be forced out of care and should have a greater say on when they move into independent living; and
- Giving local authorities the ability to pilot new projects – Staying Put and Right2bared4 road-tested extended and improved leaving care support.

The Staying Put and Right2bared4 pilots in particular were introduced with the intent of being a precursor to national rollout, presumably through legislation. Kevin Brennan MP, former Children's Minister said in 2007:

***'We intend to develop good practice from these pilots that can be embedded nationally, so that all local authorities will be flexible enough to meet the individual***

---

<sup>20</sup> Coles B, Godfrey C, Keung A, Parrott S, Bradshaw J, Estimating the life-time cost of NEET, York: Department of Social Policy and Social Work and Health Sciences, 2010

<sup>21</sup> Peters C, Dworsky A, Courtney M and Pollack H, Extending foster care to age 21: Weighing the cost of government against the benefits to youth. Chicago, IL: Chapin Hall, 2009. [Accessed via: [http://www.chapinhall.org/sites/default/files/BCA%20CH%20report\\_final\\_August\\_11.doc.pdf](http://www.chapinhall.org/sites/default/files/BCA%20CH%20report_final_August_11.doc.pdf) (09/10/13)]

<sup>22</sup> Catch-22, Access all Areas, London: Catch-22, 2012, p5 [Accessed via: <http://www.catch-22.org.uk/Files/Access-all-Areas.pdf?id=80522775-6a97-4332-a5d1-a03600a26f8e> (04/09/13)]

***needs of young people in care, so that they only move placements when they are properly ready.***<sup>23</sup>

However, five years after the Act and two years after the landmark pilots ended looked after children, especially care leavers, appear to have slipped from the political agenda. The Children and Families Bill 2013 presented a unique opportunity for the Government to take decisive action to improve the lives of looked after young people. Yet, aside from the provision of Virtual School Heads, the Bill focuses all attention with regard to looked after children on adoption support.

Whilst the Government should be applauded for taking action on adoption, as the best way to provide permanence for some looked after children, it only offers one part of the solution. The average age of adoption is just 3.7 years old, and only two per cent of adoptions happen after the age of ten.<sup>24</sup> Currently adoption provides a route out of care for only six per cent of looked after children every year, and although this is rising it will not be an option for the majority of looked after children.<sup>25</sup>

Despite a lack of ambition for looked after children and care leavers in the original Bill, an opportunity for the inclusion of game-changing provisions is still available at the House of Lords Committee and Report stages. It is vital this opportunity is seized as it is likely to be at least five years before another relevant Bill offers the opportunity to make critical changes for care leavers.

The longer these changes to statutory provision are left, the more young care leavers will be forced to make the journey to adulthood alone.

---

<sup>23</sup> Kevin Brennan in an interview with Child and Youth Care Network [accessed via: <http://www.cyc-net.org/occasional/occasional-071024.html> (viewed 20/09/13)]

<sup>24</sup> Department for Education, National Statistics, Children looked after in England including adoption, London: DfE, 2013

<sup>25</sup> Ibid

## CHAPTER TWO

### Extending the Care Leaving Age: Amendments One to Four

***‘Children in care may have been “looked after” for a long period of time, but then when they are 16 or 17 we say “you have to get ready to leave now regardless of what’s happening for you”. It can have an incredibly disruptive outcome, particularly on education.’***

David Graham, CEO of Care Leavers Association in evidence to the CSJ

***‘I struggled to keep myself or the place clean because no one has ever shown me how. My landlord didn’t understand and kicked me out.’<sup>1</sup>***

Care leaver in evidence to the CSJ

To improve the outcomes of care leavers the CSJ believes the Government should make a long-term commitment to raising the care leaving age. This means increasing the age care leavers are able to remain in a supportive environment to match the experiences of their peers. At present 46 per cent of care leavers say that they should have stayed in care longer.<sup>26</sup> The CSJ recommends four amendments, in this area, which together constitute crucial first steps towards making care leavers’ transitions mimic those of other young people:

- extending foster care until 21;
- extending residential care until 21;
- supported placements until 21; and
- allowing those who leave care to return to a supported placement if they wish.

#### 2.1 The ‘cliff-edge’: current leaving care provisions

***‘Just because a number changes, doesn’t mean you feel any different. On their 18<sup>th</sup> birthday we tell young people in care they need to sort themselves out, start claiming benefits and live on their own’***

Denise Hart, service manager of supported accommodation provider in evidence to the CSJ

For care leavers the journey to adulthood involves surviving a sharp ‘cliff-edge’, where support is withdrawn rapidly. Unlike their peers, who on average leave their childhood home at 24, an age that has increased by 20 per cent since 1997,<sup>27</sup> the overwhelming majority of looked after young people will exit their childhood placement on or before their 18<sup>th</sup> birthday. For most this means a transfer onto the benefit system and a move to live alone in a flat, with little of the support and companionship they would be accustomed to in foster or residential care. As such, the experience of growing up for children with ‘corporate parents’ is very different to those with ‘ordinary’ parents. In the words of one care leaver:

<sup>26</sup> Ofsted, *After Care Young people’s views on leaving care*, Manchester: Ofsted, 2012

<sup>27</sup> Office for National Statistics, *Young adults living with parents in the UK, 2011*, 29<sup>th</sup> May 2012 [accessed via: <http://www.ons.gov.uk/ons/rel/family-demography/young-adults-living-with-parents/2011/young-adults-rpt.html> (20/09/13)]

***'How many families would go to their son and daughter at the age of eighteen and say, "Well, bye, bye. We've done our job, now you've got to go"?'<sup>28</sup>***

Yet, for over one third of looked after young people, this process begins even earlier at aged 16 or 17. And even this statistic is misleadingly low, as a significant number of young people move to independent living whilst retaining the title of being 'looked after'. The statistics show the final placement of 31 per cent of care leavers as 'other placement in the community', which in all cases listed means independent living.<sup>29</sup> Currently there are 2340 'looked after' children who are living independently, an increase of 15 per cent since 2008.<sup>30</sup> These very early exits from care are particularly concerning as they are associated with the worst outcomes in terms of incomplete education, drug and alcohol use, unemployment and unsuitable accommodation.<sup>31 32</sup>

However, even an exit at 18 puts young care leavers at a disadvantage relative to their peers, who are likely to have significant contact and support from their parent to a much later age. Staying close to the supportive environment of one's childhood home provides the time and stability in which to pursue education and undertake the low paid and starter jobs that are often necessary for career growth. Psychologists have consistently argued that young adults need support during critical transition periods and that one of the most harmful myths is that withdrawing support will make a young person more independent.<sup>33</sup> Care leavers are almost unique in terms of the number of challenges they must deal with concurrently, including finding and sustaining a home, undertaking a career or new course of education and building or rebuilding family and social networks.<sup>34</sup> The poor education and life outcomes seen are therefore unsurprising.

In extreme cases the instability of an early move can lead to homelessness. If they are unable to manage their finances or struggle with challenging behaviour they may find themselves losing their tenancies. At this point they become 'intentionally homeless' and lose priority for housing. With no family to return to and no duty from local authorities to house them, it is unsurprising that between 15 and 25 per cent of homeless people were in care.<sup>35</sup>

---

<sup>28</sup> Care Leaver quoted in Department for Education, Evaluation of the Staying Put 18+ Family Placement Programme: Final Report, London: DfE, 2011

<sup>29</sup> Department for Education, Statistics Children looked after by local authorities in England, including adoption, London: DfE, 2012

<sup>30</sup> *ibid*

<sup>31</sup> Wade, J. and Dixon, J. 'Making a home, finding a job: investigating early housing and employment outcomes for young people leaving care', *Child & family social work*, 2006, vol 11, no 3, pp 199–208.

<sup>32</sup> Dixon J, Wade J, Byford S, Weatherly H, Lee J, Young people leaving care, study of outcomes and costs, York: University of York, 2004

<sup>33</sup> Apter T, *The Myth of Maturity*, New York: W. W. Norton & Co, 2002 and Coleman, J *The Nature of Adolescence*, East Sussex: Routledge, 2010

<sup>34</sup> Biehal, N., Clayden, J., Stein, M. & Wade, J. *Moving on: Young People and Leaving Care Schemes*, London: Her Majesty's Stationery Office, 1995

<sup>35</sup> See: Homeless Link, *Homeless watch*, London: Homeless Link, 2010 and; Centrepoin, *The changing face of youth homelessness*, London: Centrepoin, 2010.

If the Government is to improve the outcomes of care leavers, then it must raise the care leaving age to provide them with greater support. As shown in the box below, there is strong international precedent for this approach. The rest of this chapter suggests how we can ease the gradient of the current cliff edge, and provide a longer and more flexible transition into adulthood.

### International Precedent

International policy and practice demonstrate that the UK's 'cliff-edge'-style care provisions are not mirrored by other European countries, where young people can stay in care for longer and have more choice about the age at which they leave.

#### France

France has used the concept of 'Jeunes Majeurs' (of age young people) since 1975. When young people in care turn 18 they go through a short legal process, which means they retain the status of being looked after. They are offered financial and practical assistance with job hunting and accommodation. Currently 13 per cent of young people in the care system in France are between 18 and 21.<sup>36</sup>

#### Sweden

In Sweden it is very unusual for a young person to move from care into independent living before the age of 18, or 21 for those with behavioural difficulties. The majority of young people stay until the end of secondary education at 19 and 15 per cent of those in care are aged between 18 and 21.<sup>37 38</sup>

#### Denmark

In Denmark six months before a young person's 18<sup>th</sup> birthday their needs are assessed to decide if they would benefit from continued support. This can lead to a range of several kinds outcomes, including continuation of the childhood care placement or the provision of a personal adviser, support worker or support package. Young people can continue to receive this support until 23.<sup>39</sup>

#### Germany

In Germany young people can remain within the care system until 27, with the state continuing to provide accommodation and support. 25 per cent of those in the care system in Germany are over the age of 18.<sup>40</sup>

<sup>36</sup> UEA, Inter country comparisons of children in public care: France. [accessed via: [http://www.uea.ac.uk/polopoly\\_fs/1.57107!francepdf.pdf](http://www.uea.ac.uk/polopoly_fs/1.57107!francepdf.pdf) (viewed 09/09/13)]

<sup>37</sup> Hill M, Hojer I, Johanasson H, Yippee Project Summary Sweden. London: Institute of Education, 2008 [Accessed via: <http://tcru.ioe.ac.uk/yippee/Portals/1/Sweden%20summary.pdf> (18/09/13)]

<sup>38</sup> ADCS, Evidence scope: models of adolescent care provision, London: ADCS, 2013

<sup>39</sup> UEA, Inter country comparisons of children in public care: Denmark [accessed via: <http://tcru.ioe.ac.uk/yippee/Portals/1/Denmark%20summary.pdf> (viewed 09/09/13)]

<sup>40</sup> Thoburn J, Globalisation and child welfare: some lessons from cross-national study of children in out of home care. Norwich: Social Work Monographs, 2007

Four amendments are proposed:

- The right to remain with your childhood foster carer until 21 (Amendment One);
- The right to remain in your childhood residential home until 21 (Amendment Two);
- The right, for those for whom the first and second options are not suitable, to a supported placement until 21 (Amendment Three); and
- A guarantee for young people who leave care at 16 or 17 of being able to return to foster or residential care if they wish (Amendment Four).

## 2.2 Amendment One: Staying Put

***'Staying Put is an absolute no brainer, giving young people a seamless transition. Extending the foster care relationship is extremely valuable for both parties; seeing a young person grow and even graduate from university, that's the reason foster carers do their job'.***

Andy McCabe Targeted Youth Support Manager, Hull County Council in evidence to the CSJ

The first amendment we support has already been tabled by the Earl of Listowel.<sup>41</sup> Known as the 'Staying Put' amendment, it would allow young people to remain with their former foster parents until at least the age of 21.

### Amendment One: Staying Put<sup>42</sup>

The following amendment amends the Children Act 1989 to allow young people in foster care to remain with their foster carers until at least the age of 21.

After section 23C(5) Children Act 1989 (continuing functions in respect of former relevant children) add new subsection 5AA:

(5AA) (1) The assistance given under subsection 4(c) shall include the continuation of accommodation with the former local authority foster parent, unless:

- (a) the former relevant child states that he or she does not wish to continue residing in such accommodation, or
- (b) the former local authority foster parent does not wish to continue to provide accommodation, or
- (c) it is not reasonably practicable to arrange such accommodation.

(2) 'Former local authority foster parent' means a local authority foster parent within the meaning of section 22C(12) with whom the former relevant child, as a looked after child, was placed under section 22C(6)(a) or (b).

<sup>41</sup> Tabled on 6<sup>th</sup> July 2013, [accessed via: <http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0032/amend/am032-a.htm> (viewed 01/10/13)]

<sup>42</sup> NCAS, TACT, Voice, The Who Cares? Trust, Care Leavers Association, Fostering Network, Barnardo's, Still our children, briefing for house of commons report stage of the Children and Families Bill, London: May 2013

Staying Put was piloted between 2008-2011. The pilot has impressive results with young people who 'Stayed Put' twice as likely to be in full-time education at 19 than young people who did not.<sup>43</sup> These results have been replicated by a much larger study of extending foster care in the US, which also found it lead to a ten per cent decrease in early pregnancy.<sup>44</sup> The relative costs of Staying Put are low, at an estimated £2.5 million per year, when compared to expected outcomes. In a study of a similar policy in the US it was found that for every dollar spent on keeping a young person in foster care at least two dollars was saved because of extra education gained.<sup>45</sup>

However despite the clear potential gains of allowing young people to remain with their former foster parents, it remains a voluntary measure at local authority level. The numbers of young people remaining with their foster carers have barely risen since 2011 when figures were first recorded, with only five per cent of looked after children Staying Put at the age of 19.<sup>46</sup> This is seven times lower than would be expected from the pilot.<sup>47</sup>

If Staying Put remains a voluntary measure, there will be many young people who are denied the possibility of remaining with their former foster carer. The Fostering Network, a representative of foster carers in the UK told the CSJ,

***'we regularly hear from foster carers and young people who have had a long fight to force the local authority to support their placement beyond 17 – often not being resolved until the young person's 18<sup>th</sup> birthday'.***<sup>48</sup>

If Staying Put if it is going to be a policy implemented nationwide, there must be a stronger obligation on local authorities to continue the placements.

### 2.3 Amendment Two: Extending residential care to 21

***'Care leavers who spend time in residential care forming relationships are at a distinct disadvantage to those in foster care, where staying on until adulthood is actively encouraged to both the looked after child and the foster carers.'***

Mark Kerr, PHD Researcher and Assistant Lecturer in Social Policy, in evidence to the CSJ

The Staying Put Amendment only provides one part of the answer for care leavers, as in its current form it caters only for those in foster care. Residential care, whilst overall making up

---

<sup>43</sup> Department for Education, Evaluation of the Staying Put 18+ Family Placement Programme: Final Report, London: DfE, 2011

<sup>44</sup> Dworsky, A. & DeCoursey, J. Pregnant and parenting foster youth: Their needs, their experiences. Chicago, IL: Chapin Hall at University of Chicago, 2009

<sup>45</sup> C. Peters, A. Dworsky, M. Courtney, & H. Pollack (2009). Extending foster care to age 21: Weighing the cost of government against the benefits to youth. Chicago, IL: Chapin Hall. [Accessed via: [http://www.chapinhal.org/sites/default/files/BCA%20CH%20report\\_final\\_August\\_11.doc.pdf](http://www.chapinhal.org/sites/default/files/BCA%20CH%20report_final_August_11.doc.pdf) (09/10/13)]

<sup>46</sup> Department for Education, Statistics Children looked after in England, including adoption, London: DfE, 2013

<sup>47</sup> Department for Education, Evaluation of the Staying Put 18+ Family Placement Programme: Final Report, London: DfE, 2011

<sup>48</sup> Fostering Network in Evidence to the CSJ

only 12 per cent of care placements for looked after children, accounts for a quarter of final placements.<sup>49</sup> In order to cater for these care leavers a further amendment is needed to extend Staying Put provisions to include residential care.

#### Amendment Two: Remaining in residential care

The following amendment amends the Children Act 1989, to allow young people in residential care to remain in their residential facility until at least the age of 21.

After section 23C (5) Children Act 1989, (continuing functions in respect of former relevant children) add new sub-section 5D:

(5D) (1) The assistance given under sub-section 4(c) shall include accommodation within a former residential facility:

unless:-

- (a) the former relevant child states that he does not wish to reside in such accommodation, or
- (b) the former residential facility does not wish to continue to provide such accommodation

'Residential facility' may mean care home or other e.g. residential special school.

Whilst extending foster care to 21 has received national funding for pilots, had explicit backing from the Children's Minister and is already in some stage of implementation at local authority level, there has been no mention of what happens to the roughly 2500 children who exit residential care every year.<sup>50</sup> This very vulnerable group of young people, with challenging needs, cannot be ignored.

- 62 per cent of young people in children's homes have 'clinically significant' mental health difficulties,<sup>51</sup>
- 74 per cent of young people in children's home have been reported to be violent or aggressive in past 6 months,<sup>52</sup>
- More than a quarter of young people in children's homes have had at least 5 previous placements<sup>53</sup>; and
- One third of young people in residential care are placed more than 20 miles from home, meaning they are less likely to have supportive relationships when they return home on leaving care.<sup>54</sup>

---

<sup>49</sup> Department for Education, Children looked after in England by local authorities, including adoption, London: DfE, 2012

<sup>50</sup> *ibid*

<sup>51</sup> Department for Education, Children's Homes in England Data Pack, London: HM Government, September 2013

<sup>52</sup> *ibid*

<sup>53</sup> *ibid*

<sup>54</sup> *ibid*

These young people are the most likely to struggle to sustain a tenancy and live independently, yet they are also the most likely to make an early move to independent living. Currently over half, 56 per cent, of children in residential care move into independent living at 16 or 17 and the remainder will leave on their 18<sup>th</sup> birthday.<sup>55</sup> On moving to independent living they lose both a supportive environment and the relationships they have built with their carers. It is therefore important that Staying Put is made an option for young people in residential care.

There are three major barriers to extending residential care placements:

- Placements in residential care are expensive costing £4135 in Local Authority Provisions and £3860 in Voluntary Provisions per child per week, compared to an estimated £694 per week in foster care.<sup>56</sup> Mark Kerr, PHD Researcher and Assistant Lecturer in Social Policy, told the CSJ:

***‘Even if a child is settled, happy and able to stay in residential care until adulthood, this is rarely permitted on cost grounds alone’.***

- Although the average age of children in care homes is 14.6,<sup>57</sup> many do not adequately cater for preparing young people for adulthood. A Government report in 2006 identified a significant shortage in semi-independent and transitional residential care placements.<sup>58</sup> Other reports have found that the institutional nature of many care homes mean that young people are ill prepared for a move to independence.<sup>59</sup>
- Finally, enhanced child protection in residential homes mean that young people cannot return to visit without enhanced Disclosure and Barring Service (DBS) checks (formerly CRB), which any care leavers who has had incidents with the criminal justice system will not pass.

However, none of these issues are insurmountable and tackling them would drive significant improvements in the residential care sector more generally, by making it more effective and sustainable. When done well, residential care can provide an excellent transition to adulthood, as demonstrated in the case study below. There is therefore much to be gained by extending residential care. As the Care Leavers Association told the CSJ:

***‘Allowing young people to stay in residential care until they are ready to leave would bring great benefits to the young person and save on potential support costs later on down the line if things go wrong.’***

---

<sup>55</sup> Department for Education, Children’s Homes in England Data Pack, London: HM Government, March 2012

<sup>56</sup> *ibid*

<sup>57</sup> Department for Education, Children’s Homes in England Data Pack, London: HM Government, September 2013

<sup>58</sup> Department for Children, Schools and Families, Determining the Optimum Supply of Children’s Residential Care, London: Department for Children, Schools and Families, 2006 p.21

<sup>59</sup> Pawson, H, Donahoe, T, Munro, M, Netto G, Wager F, and Littlewood M, Investigating Tenancy Sustainment in Glasgow, Glasgow: Glasgow Housing Association, 2006

### Case Study: Transitional Children's Home

Unlike the majority of residential facilities, this small London children's home provides residential care for young people between ages 13 and 20, including accommodation for five young people between 13-17 in the main unit and four young people between 16-20 in supported on-site flats. When a young person reaches the age where they wish to try living independently (between 16 and 18) they move into the neighbouring semi-independent unit. This offers young people real continuity on moving into adult life, rather than being forced into new accommodation before they are 18.

The manager of the children's home told the CSJ: 'Often young people come to us quite late and many of them have had compromised parenting. The extra time with us is so important to allow them to learn how to live on their own'. The young people value this support, one said of the home: 'The staff are always supportive and always here to talk to'.

## 2.4 Amendment Three: Supported accommodation until 21

Whilst remaining in a former care placement is likely to be the ideal option for many looked after young people, as it preserves existing relationships with carers, this will not always be possible. Rather than forcing young people who are not able to remain in their current placement into independent living, the opportunity of a supported placement should still be offered. The following amendment would ensure that local authorities provide all care leavers with the resources to stay in foster, residential or semi-independent placements until 21.

### Amendment Three: Supported Placements to 21

The following amendment amends the Children Act 1989, to provide young people leaving care the resources to remain in a supported placement until at least the age of 21.

After section 23C (5) Children Act 1989, (continuing functions in respect of former relevant children) add new sub-section 5E:

(5E) (1) The assistance given under sub-section 4(c) shall include accommodation in a supported placement unless the former relevant child states that he or she does not wish to reside in such accommodation.

Supported placement may mean: foster care, community home, semi-independent accommodation (accommodation with on-site support staff), supported lodgings (room within a home with support provided by host), or any other appropriate.

Just because a young person does not wish to remain in their former placement does not mean they are ready for independent living. They may make the choice because of a poor relationship with their former carers; for instance in the Staying Put Pilot about three quarters of those who chose not to Stay Put were judged to have a weak attachment to their

foster carer.<sup>60</sup> For these young people, who may still wish to live supportive environment, a new foster or residential placement is likely to be far superior to independent living. Currently, offering new foster or residential placements at 18 is highly unusual in England,<sup>61</sup> however for these young people it could provide vital extra support.

Even those who state they wish to be independent may not be ready for the demands of a tenancy. According to Professor Mike Stein many care leavers who have had unstable childhoods have a 'survivor' mentality, of wanting to look after themselves.<sup>62</sup> For these young people a semi-independent, supported placement is likely to be preferable to a move to independent living. As one former supported lodgings provider told the CSJ:

***'Young people will say that they want a flat and to live on their own, but they often don't think about what this entails. Really what they want and need is to move into independent living gradually, via a more supported placement. When they can see this is what they are working towards they tend to be much more positive.'***

There are two main types of semi-independent placements available, supported lodgings and semi-independent accommodation (see box below). Increasingly local authorities are acknowledging the importance of this accommodation, with an increase in use of 17 per cent since 2009.<sup>63</sup> At present 21 per cent of care leavers are in semi-independent accommodation or supported lodgings at 19.<sup>64</sup> However, provisions are still very patchy with only one third of local authorities declaring any supported lodgings or semi-independent accommodation for care leavers at 19.<sup>65</sup> The use of semi-independent placements at present can also be problematic where the young person is responsible for funding the placement. This can act as a disincentive to gaining employment because the loss of housing benefit would mean a young person is unable to afford the slightly higher rent of supported placements.<sup>66</sup>

---

<sup>60</sup> Department for Education, Evaluation of the Staying Put 18 plus Family Placement Programme, London: DfE, 2012

<sup>61</sup> New foster or residential care placements are not currently recorded as a possible destination of young people leaving care in national statistics.

<sup>62</sup> Stein M, Resilience and Young People Leaving Care, York: Joseph Rowntree Foundation, 2005

<sup>63</sup> Department of Education, Children looked after by local authorities in England, including adoption. Local Authority Tables, London: Department of Education, 2013.

<sup>64</sup> *ibid.*

<sup>65</sup> Department of Education, Children looked after by local authorities in England, including adoption. Local Authority Tables, London: Department of Education, 2012.

<sup>66</sup> NCAS, What could make the difference, Care leavers and the benefits system, London: NCAS, 2010

## Examples of semi-independent provisions

### 1. Supported lodgings

Supported lodgings are a room in a family home provided by a host, who offers help and support to the young person. Operating somewhere between foster care and ordinary lodgings in terms of both cost and support levels, supported lodgings are a good option for care leavers who want more independence but to remain in a family environment.

Supported lodgings schemes are currently run by a number of independent organisations and local authorities. The average weekly cost of a young person in supported lodgings is £151 per week, which is most frequently paid for by a combination of children's services funds and housing benefit or the young person's income.

Improvements in educational achievement and employment have been recorded in relation to supported lodgings when compared with other forms of supported accommodation.<sup>67</sup> Evidence also suggests that young people find it easier to maintain tenancies in supported lodgings than other kinds of supported accommodation.<sup>68</sup>

### 2. Semi-independent accommodation

As one former supported lodgings manager told the CSJ, 'those who have experienced a difficult family history may not feel comfortable in supported lodgings and may even try to sabotage the placement. For these young people semi-independent accommodation may be a better fit'.

Semi-independent accommodation is often 'university style' with care leavers having their own room but shared kitchen facilities and on-site support staff. The CSJ previously recommended extending this provision in *Couldn't Care Less*, a proposal that was supported by 75 per cent of the British public.<sup>69</sup> At present semi-independent accommodation is often only provided until the age of 18, the service manager of one semi-independent accommodation provider, Future Horizons, told the CSJ that although they are usually only funded to provide semi-independent accommodation up to the age of 18, many young people are not ready to move on then and there would be a great benefit to allow them to remain in this style of accommodation longer.

The guarantee of a supported placement will help more care leavers get the stability they need to succeed in adult life.

---

<sup>67</sup> Department for Communities and Local Government, *Making a difference, supported lodgings as an option for young people*, London: DCLG, 2008.

<sup>68</sup> *ibid*

<sup>69</sup> YouGov poll for the Centre for Social Justice, July 2008, cited in *Couldn't Care Less* (2008)

## 2.4 Amendment Four: The right to return to care

***'What young people leaving care really need is flexibility, the ability to make mistakes and to come back and be supported.'***

Leaving Care Manager in evidence to the CSJ

The final amendment the CSJ recommends in this section guarantees young people who make early exits from care the ability to return to a foster or residential care placement if their return home or move into independent living breaks down. This amendment will ensure that care leavers are not disproportionately penalised for making the mistake of leaving too early.

### Amendment Four: The right to return to care

The following amendment amends the Children Act 1989, to allow 'relevant' young people to return to foster care or residential care.

After section 23B (8b) Children Act 1989, additional functions of the responsible authority in respects to looked after children amend subsection (8b) as follows:

23B (8b) providing him with or maintaining him in suitable accommodation; including allowing him to return to a foster care placement, residential care placement or any other appropriate if the child expresses such a wish.

Although local authorities must accommodate any 16 or 17 year old who is homeless under the Children Act 1989, the law does not require that the accommodation has a supported element. This means that if a young person leaves care at 16, returns to their family and the placement breaks down (as an estimated 50 per cent of returns home do),<sup>70</sup> there will be no entitlement to return to foster or residential care. Similarly if a young person decides to move into independent living and struggles to live alone, he or she is likely to be given a place in a hostel or a new flat, when what is really needed is a more supported option.

As we have seen, very young care leavers, who move into independent living at 16, are particularly likely to experience poor outcomes, so the return to a supported placement would be highly beneficial for these young people. This availability of a safety net is also very important to care leavers. In the recent Right2bcared4 pilot, 80 per cent of care leavers stated that young people should be allowed to return to care and 31 per cent actively considered it during the pilot,<sup>71</sup> carers would welcome this opportunity.<sup>72</sup>

There should be a preference, if possible, to return a young person to a former foster care placement or residential placement. In order to implement this there is a need to investigate ways to facilitate keeping a placement open, such as via paying a retainer to foster carers. However, returns to care should not be limited by the availability of a former placement as a young person may still benefit greatly from a supportive placement in a new home.

<sup>70</sup> NSPCC, *Returning Home from Care What's Best for Children*, London: NSPCC, 2012

<sup>71</sup> Department for Education, *Evaluation of the right2bcared4 pilots, final report*, London: DfE, 2011

<sup>72</sup> C4EO, *Increasing the number of care leavers in 'safe, settled accommodation'*, London: C4EO, 2009

## CHAPTER THREE

### Enabling Looked After Children to Hold Local Authorities to Account: Amendment Five

***'In applying the accepted 'corporate parenting' test, "Would this be good enough for my child?", we are bound to conclude that for looked after children it is demonstrably not; and that will not change until the State begins to recognise that legal safeguards and redress, available to looked after young people, fall well short of those aspirations we espouse and deliver for our own children.***

Mike Lindsay, former head of advice at Children's Rights Director in evidence to the CSJ

Improving outcomes for children in care and care leavers requires not just further legislation but also ensuring that existing legislation is implemented effectively. As the CSJ has previously argued in *Couldn't Care Less*, many of the problems facing children in care are the result of poor implementation of existing provisions in the law.

The final section of this paper investigates the shocking state of local authorities implementation of the law and duties contained therein, and the poor means of redress available to young people. It recommends opening up section 8 of the Children Act 1989, to give looked after children an equal right to contact orders, prohibited steps orders, and specific issue orders. This will provide an important mechanism for implementation of existing legislation at a local authority level.

***75 per cent of the public agree that local authorities should be held legally accountable in court if they do not properly fulfil their obligations to children in care.<sup>73</sup>***

This final amendment is wider in remit than others outlined in Chapter Two and it applies to both looked after children and care leavers. However, it could improve care leavers' outcomes in two ways. First, it is likely to drive improvement in the quality of care before a child leaves, providing important early intervention. Second, it would provide an important means for care leavers to ensure they get proper accommodation and personal support when leaving care.

#### 3.1 Failure to promote the welfare of the child

The Children Act 1989 states that in all things local authorities have a duty to 'safeguard and promote the welfare of children within their area who are in need'.<sup>74</sup> Many other specific duties are also laid out in the Children Act 1989 and the Children and Young Persons Act 2008. Yet clear instances of poor policy implementation and actions against children's welfare exist throughout the care system. Three key instances of failure to implement legislation are discussed below.

<sup>73</sup> YouGov Polling for CSJ (July 2008) Cited in CSJ Report *Couldn't Care Less*

<sup>74</sup> Children Act 1989, Section one, subsection one and section one, subsection four.

## Placements close to home

**Legislation:** The Children and Young Persons Act 2008 section 9, states that 'as far as is reasonably practicable' and when 'consistent with their welfare' a local authority must provide accommodation for a child that is 'in the authority's area'. Section 8 also states that the placement must allow the child to live near their home.

**Reality:** One third of children in care are placed outside of their local authority area.<sup>75</sup> In the case of residential care almost half of children are placed outside their area.<sup>76</sup> Differences between local authorities are clear, with 23 local authorities placing over three quarters of their children in residential care outside of their boundaries.<sup>77</sup>

## Accommodation with siblings

**Legislation:** Section 8 of the Children and Young Persons Act 2008 states that suitable accommodation should ensure that 'if C has a sibling for whom the local authority are also providing accommodation, it enables C and the siblings to live together'.

**Reality:** In a recent survey almost three quarters of children in care reported being separated from their siblings. Young people in children's homes are most affected, with 96 per cent being separated from a sibling.<sup>78</sup>

## Choice of placement

**Legislation:** Section 1 of the Children Act 1989 states that a local authority must 'ascertain a child's wishes and feelings' and give them 'due consideration' when making care provisions for them.

**Reality:** Over half of children state they had no choice over their placement and a quarter stated they were only told about a change in accommodation on the day of moving.<sup>79</sup> For care leavers the numbers in suitable accommodation at 19 ranges between 61 and 100 per cent between different local authorities.<sup>80</sup>

In each of these cases there is clear legal statute that says these situations should not occur, yet they still happen. The reason for this is that the current mechanisms available to children whose local authority is acting against their interests are both too weak and too inconsistent.

The Government, in the case of adoption, has tacitly acknowledged this issue of local authority inconsistency, with support moved from local authorities to a centralised Adoption

---

<sup>75</sup> Department of Education, National Statistics Children looked after in England, including adoption, London: DfE, 2013

<sup>76</sup> Department for Education, Children's Homes in England Data Pack, London: HM Government, 2013.

<sup>77</sup> *ibid*

<sup>78</sup> Ofsted, Children's Care Monitor, Manchester: Ofsted, 2011

<sup>79</sup> *ibid*

<sup>80</sup> Department of Education, National Statistics Children looked after by local authorities in England, including adoption, London: DfE, 2012

Support Fund and in some cases adoption recruitment being taken out of the hands of local authorities.<sup>81</sup> <sup>82</sup> The current mechanisms available for holding local authorities to account are evidently ineffective.

## 3.2 Current safeguards for looked after children

There are three broad systems in place to ensure local authorities prioritise young people's views and welfare when deciding their care: independent reviewing officers, complaints procedures and judicial reviews. Whilst all three are potentially useful tools on some events, none are powerful enough to ensure that the needs and welfare of a child are prioritised over the wishes and finances of a local authority. Moreover, they are only available after harm is deemed to have been suffered.

### 1. Independent Reviewing Officers

The first way the Government has tried to ensure implementation of care policy is through Independent Reviewing Officers (IROs). IROs attend care planning and leaving care meetings to ensure that the wishes and welfare of a child are taken into account. At any time an IRO has the power to report a breach in children's rights to CAFCASS, which reports to the family courts.

However, in their current state most IROs fail to provide an effective safeguard. Between 2004-2011 IROs reported only eight cases to CAFCASS, despite jointly overseeing almost 70,000 children at any one time.<sup>83</sup> One reason for this is the size of their caseload: a recent Ofsted report found IROs overseeing as many as 120 children at any one time.<sup>84</sup> IROs are often disconnected from what is happening with looked after children. Voice, a leading advocacy charity, told the CSJ that it is often hard for them, even as trained advocates, to track down the IROs of the young people they represent.<sup>85</sup>

Even where IROs do have appropriate caseloads, it is questionable whether, as local authority employees, they could ever provide a robust impartiality in their judgements. There is also a question mark over expertise: in a recent case, where a local authority was found to have breached two brothers' human rights, the judge stated that the IRO involved did not have sufficient legal expertise to be able to ensure the brothers' views were listened to.<sup>86</sup>

### 2. Local authority complaints procedures

The second action a young person can take if they feel a local authority is breaching its duty to them is to make a complaint to the local authority. However there are numerous

---

<sup>81</sup> Press Release, New £19.3 million support fund for adoptive parents, 11/09/2013. [Accessed via: <https://www.gov.uk/government/news/new-193-million-support-fund-for-adoptive-parents> (viewed 25/09/13)]

<sup>82</sup> BBC News, Adoption: Councils could lose powers, says government, 24/01/13, [accessed via <http://www.bbc.co.uk/news/education-21175272> (10/09/13)]

<sup>83</sup> Ofsted, Independent Reviewing Officers Taking Up the Challenge? Manchester: Ofsted, 2013

<sup>84</sup> *ibid*

<sup>85</sup> Voice, in evidence to the CSJ

<sup>86</sup> High Court of Justice, Family Division, A and S (Children) and Lancashire County Council. [accessed via: <http://www.bailii.org/ew/cases/EWHC/Fam/2012/1689.html#para133> (19/09/13)]

problems with local authority complaints procedures, which mean they are not a robust measure for holding local authorities to account.

First, complaints about local authorities, much like IRO's, are not sufficiently impartial as they are carried out internally. Second, the complaints procedures are lengthy and complex, meaning that a young person often has to go through several stages in order for a decision to be reached, which can take up to a year to complete. By the time a decision is made, the judgement may cease to be relevant – for instance a young person may have settled in at unwanted accommodation and previous placements may have been filled.

Whilst complaints procedures are an important part of resolving problems, particularly at early, less serious stages, they do not provide a sufficiently robust safeguard for many looked after children. In a recent survey by the Children's Rights Director, over a third of looked after young people surveyed said making a complaint made no difference to their situation and over a fifth said it made it much worse.<sup>87</sup>

### 3. Judicial Reviews

The final, and arguably most effective, way of holding local authorities to account is by a judicial review. A judicial review is a procedure in administrative law, which allows anyone to question the way a local authority decision has been made. Mike Lindsay, former head of advice to the Children's Rights Director, told the CSI:

***'Increasingly we are compelled to advise young people whose local authorities decide to move them without regard to their views or proper care planning processes to use judicial reviews. It surely cannot be right that in certain parts of the care system the threat of judicial review has become the only effective way of protecting the rights and interests of some of our most vulnerable children'.***

The reason judicial reviews are superior to other means of holding local authorities to account is that, unlike complaints procedures and IRO's, they are truly impartial, properly robust and fast enough to make a real difference. However, there are also limits to the effectiveness of judicial reviews. First, as judicial reviews are a procedure of administrative law rather than family law, they can question only the way a decision was made not the decision itself. Second, judicial reviews are an extremely expensive way of enforcing rights, costing upwards of £30,000.<sup>88</sup> Given recent cuts to legal aid, it is increasingly unlikely that judicial reviews will continue to be an option for looked after children.

### 3.3 Section 8 orders: an unequal provision

There is a current provision in the Children Act 1989, currently denied to looked after children, which could provide an important mechanism for resolving the inconsistent and

---

<sup>87</sup> Ofsted, Young people's views on complaints and advocacy, Manchester: Ofsted, 2012

<sup>88</sup> Leighday, A quick and easy guide to judicial reviews, London: Leighday. [Accessed via: <http://www.leighday.co.uk/LeighDay/media/LeighDay/documents/JR-Quicky-and-Easy-Guide.pdf?ext=.pdf> (30/09/13)]

unsatisfactory implementation of existing legislation discussed above. Moreover it would enable prevention of harm rather than simply redress after the event, and is a vital early intervention measure.

The Children Act 1989 was a landmark piece of legislation in establishing autonomy for children and giving them the right to have their views and wishes listened to. Specifically, the Act introduced section 8 orders, which gave courts the powers to stop their parents taking actions that were against the wishes and welfare of their children. Three examples of section 8 orders are:

- Contact orders, which require the person a child lives with to allow them to visit and stay overnight or for longer with a certain person. These are commonly used in divorce proceedings to ensure a child keeps regular contact with the parent they do not live with;
- Prohibited steps orders, which prevent a parent from taking certain actions that would normally be part of their parental responsibility, e.g. stopping a parent moving a child away from their friends and family; and
- Specific issue orders, which give direction on a specific question, e.g. which school a child should go to.

These three orders are used extensively when children are in difficult situations, for instance when their parents are separating. Section 8 orders acknowledge that a parent, for whatever reason, may not always do what is best for a child and give courts the ability to put first a child's wishes about where they live and who they see.

As we have seen, corporate parents just like 'normal' parents may not always take a child's wishes into account. Yet under section 9 subsection 1 of the Children Act 1989, children in care are denied the ability to access these measures. It says:

***No court shall make any section 8 order, other than residence order, with respect to a child who is in the care of a local authority.***

This exception is a gross inequality as there are many instances where these protective measures could be used to ensure that issues such as unwanted placement moves and separation from siblings do not happen.

- Contact orders could ensure that a child is able to make regular visits to their siblings;<sup>89</sup>
- Prohibited steps orders could be made by a court if a local authority plans to move a child to a placement far away from their home; and
- Specific issue orders could be used in a variety of cases, from unwanted school changes to a 16-year-old who is moved to an independent living placement before he or she is ready.

---

<sup>89</sup> At present contact orders can be made under certain circumstances under section 34 of the Children Act 1989, however they can only be made by the local authority or the child – not crucially, parents, siblings or any other part of the family.

In summary, whilst there is specific legislation to try to ensure that that looked after children's wishes are taken into account, this is very often not adhered to. By taking away the right to section 8 orders, looked after children are denied the opportunity to enforce their rights.

### 3.4 Opening up section 8 orders to looked after children

Section 8 orders should be opened up to looked after young people by abolishing section 9, subsection 1 from the Children Act 1989.

#### Amendment Five: Opening up Section 8 Orders

The following amendment amends the Children Act 1989 to open up section 8 orders to looked after children.

In the Children Act 1989, remove section 9, subsection 1:

No court shall make any section 8 order, other than residence order, with respect to a child who is in the care of a local authority.

There are three clear benefits to this policy:

- Give young people a clear and direct means of redressing problems, allowing them the autonomy to hold local authorities to account themselves, rather than relying on others to enforce their rights;
- End a discriminatory practice, which gives looked after children fewer rights to question the actions of their parents than other young people; and
- Provide a clear incentive for local authorities to implement existing policy concerning looked after children, driven not by government but by the people whose lives they most affect.

Opening up section 8 has clear advantages yet it is something successive governments have resisted doing. The final section of this chapter examines and dismisses possible objections to the measure.

### 3.5 Objections to enabling looked after children to hold their corporate parents to account

#### ***It will cost too much.***

First it is important to note that Section 8 orders are likely to be much less costly than both judicial reviews, which require a full hearing including a barrister, and the top level of local authority complaints procedures, which tend to be lengthy and expensive. The option to apply for a section 8 order could replace the final stage of local authority complaints procedures, providing a simpler and more cost effective final measure.

Second, opening up section 8 would apply to a relatively small group of around 40,000 young people.<sup>90</sup> Of this number there will not be many young people for whom a complaint will become serious enough to warrant a section 8 order. However, for the young people who are able to make an order to stop an unwanted move or separation from a sibling, the potential gains are huge.

Third, the threat of legal action is likely to improve local authority decision making procedures and ensure that legal duties are more consistently implemented. This could mean huge potential long term savings. For instance, the improved placement stability, that is likely to accompany this change, could mean extensive savings in improved outcomes.<sup>91</sup>

***Children will abuse the power.***

Whilst it is true that any legal right is open to abuse, this is an objection to section 8 orders more generally, not to them being opened up to looked after children. The nature of the legal system means that a section 8 order will only be taken forward by a solicitor if there is robust evidence to suggest that a child's welfare is in significant jeopardy.

***Legal aid cuts will make the right unusable.***

This is perhaps the largest barrier to using section 8 orders to improve the outcomes of children in care, but it need not be insurmountable. The Government could extend eligibility for legal aid to include looked after children with a strong case, since they are a vulnerable group, and local authorities could be required to pay those legal fees if a case passes. This would further the incentive for local authorities to guard against such cases by listening to a child's needs from the outset.

Opening up this important right to children in care and care leavers has huge potential to transform their outcomes. Using the opportunity of the Children and Families Bill to make this change would be an historic step forward for the rights of children in care.

---

<sup>90</sup> Children looked after on voluntary provisions are already eligible for section 8 orders, there are currently 40180 looked after children on care orders. See: Department of Education, National Statistics Children looked after by local authorities in England, including adoption, London: DfE, 2013

<sup>91</sup> Social Care Institute for Excellence, Placement Stability Guide. [Accessed via: <http://www.scie.org.uk/publications/guides/guide07/placement/placement/> (30/09/13)]

## CHAPTER FOUR

### Further Amendments to the Children and Families Bill 2013 Supported by the CSJ

This section briefly reviews three proposed amendments which, whilst out of the scope of this report to discuss in detail, would provide real improvements to the lives of children in care and care leavers.

#### 4.1 Supporting returns home<sup>92</sup>

Returning home to birth families is the most common route out of the care system for under 16s and even at 19 years of age 13 per cent of care leavers have returned to their birth families.<sup>93</sup> As the CSJ previously identified in its report *Couldn't Care Less*, there is too often a revolving door between the care system and birth families with inadequate support to maximise the likelihood that returns home will succeed. At present half of all returns home from care break down and 40 per cent of children in the care system have been in care more than once.<sup>94 95</sup> Half of those who originally went into care because of neglect or abuse will suffer further harm on returning home.

We support the amendment proposed by the NSPCC, Family Rights Group and Kinship Care Alliance to the Children and Families Bill which will require local authorities to prepare, support and monitor the welfare of all children who return to their birth families. The amendment would apply both to looked after children and care leavers and would address the revolving door syndrome which can be devastating in terms of recurring abuse, neglect and dashed hopes for young people.

#### 4.2 Personal advisers to 25<sup>96</sup>

A personal adviser usually takes over the role of a young person's social worker when they leave care, providing advice, support and a link to the local authority until the age of 21. Personal advisers also help with 'leaving care' planning and are a person to contact in an emergency. Care leavers value the support of personal advisers: in a recent survey conducted by the Children's Rights Director for England, the majority of care leavers surveyed made positive comments about their personal adviser. The role is important as it gives a stable contact who can check how the young person is doing and be available if things go wrong.

---

<sup>92</sup> NSPCC, Family Rights Group, Kinship Care Alliance, Children and Families Bill 2013 Briefing on new clause on support for children in care returning home House of Lords Committee stage, London: NSPCC, 2013

<sup>93</sup> Department for Education, National Statistics, Children looked after in England including adoption, London: DfE, 2013

<sup>94</sup> Centre for Social Justice, *Couldn't Care Less*, London: Centre for Social Justice, 2008

<sup>95</sup> NSPCC, *Returning Home from Care What's Best for Children*, London: NSPCC, 2012

<sup>96</sup> NCAS, TACT, Voice, The Who Cares? Trust, Care Leavers Association, Fostering Network, Barnardo's, *Still our children*, briefing for house of commons report stage of the Children and Families Bill, London: May 2013

In the Children and Young Persons Act 2008 personal advisers were extended to 25 for those returning to education. This was an important step in acknowledging that 21 should not be a cliff edge for support. However there remains a question as to why support and advice should only be offered to those who are returning to education. After all, care leavers in employment may also require advice and support to sustain their job and move forward. Equally, those young people who are not in education, training or employment are likely to be most in need of support to get them to the stage where they are able to take up employment or re-enter education.

For this reason Barnardo's have proposed an amendment to the Children and Families Bill 2013 to extend the availability of personal advisers up to the age of 25 for care leavers whose welfare requires it. For young people who are struggling to live independently a stable person to give advice and support can be paramount and is commonplace for their peers outside the looked after population.

#### 4.3 Virtual School Heads (VSH) to 25<sup>97</sup>

Personal advisers, whilst extremely useful for practical help, may not be the best person to help a care leaver with education decisions. Virtual school heads were piloted between 2008-2009 with impressive results, including improved GCSE results.<sup>98</sup> Virtual school heads work with teachers, carers and support workers to push the educational achievement of young people, acting as the 'pushy parent' many care leavers lack. VSHs would also provide importance strategic guidance to personal advisers.

Whilst the Children and Families Bill currently formalises the role of VSHs for looked after children, it crucially misses care leavers, both 'relevant' (16-18) and 'former relevant' (18-21). This is a missed opportunity as a quarter of care leavers are in full-time education at 19, and many more return to attempt second chance education.<sup>99</sup>

The Who Cares? Trust has proposed extending personal advisers to all care leavers.<sup>100</sup> This is a measure that many local authorities are already implementing. However without amending the Bill to extend eligibility to this service, many young people may miss out on the vital advice and support that could make a huge difference in their achievements.

---

<sup>97</sup> *ibid*

<sup>98</sup> Ofsted, *The impact of virtual schools on the educational progress of children*, Manchester: Ofsted, 2012

<sup>99</sup> Department for Education, *Children looked after in England by local authorities, including adoption*, London: DfE, 2012

<sup>100</sup> NCAS, TACT, Voice, The Who Cares? Trust, Care Leavers Association, Fostering Network, Barnardo's, *Still our children*, briefing for house of commons report stage of the Children and Families Bill, London: May 2013

## CHAPTER FIVE

### Conclusions

Taking corporate parenting seriously means striving to ensure that, as far as possible, children in care have the same chances, rights and life experiences as other young people. Yet, care leavers are forced to live independently without vital support many years before their peers and looked after young people are denied access to the legal protections afforded to all other minors.

If the Government is to be a good corporate parent, reform is vital. There must be a commitment to raising the care age incrementally, starting with the suggested amendments to increase support until 21. It is also crucial that section 8 orders are opened up to all young people. This will drive more consistent implementation of existing legislation, which has at its heart the paramountcy of a child's best interests.

These reforms are crucial to ensuring that young people make a good transition to adulthood. Without them we risk more young people falling off the cliff edge and failing to reach their true potential.



© The Centre for Social Justice

11 Belgrave Road, London, SW1V 1RB

t. 0207 592 1160 e. [admin@centreforsocialjustice.org.uk](mailto:admin@centreforsocialjustice.org.uk)

[www.centreforsocialjustice.org.uk](http://www.centreforsocialjustice.org.uk)