

# Supporting looked after children and care leavers in the Criminal Justice System:

## Emergent themes and strategies for change

*Dr Claire Fitzpatrick is Lecturer in Criminology at Lancaster University, Patrick Williams is Senior Lecturer at Manchester Metropolitan University and Darren Coyne is Projects and Development Manager at The Care Leavers' Association.*

### Setting the Scene

**The challenges of supporting looked after children and care leavers in the criminal justice system must not be underestimated.<sup>1</sup> Whilst the majority of children in care do not commit criminal offences, those who have been in the care of the state remain disproportionately represented in the justice system and this has long been the case.<sup>2</sup> The offending rates of children in care are around 4 times higher than those of all other children, with 5.6 per cent of looked after children aged 10 — 17 receiving a conviction, final warning or reprimand during the year ending 31 March 2014.<sup>3</sup> Meanwhile a third of young males in prison custody have previously been in care,<sup>4</sup> and the same survey found that 9 out of 16 girls in custody had also been in care, highlighting the even greater over-representation of females.<sup>5</sup>**

Yet, less than 1 per cent of the population ever enter the state care system. The vast majority of children and young people are drawn into the care system because of 'abuse or neglect' accounting for 62 per cent of children in care in 2013. These findings challenge the more frequently assumed category of 'socially unacceptable behaviour' which accounted for just 2 per cent of children in the same year.<sup>6</sup> There are clearly methodological difficulties in identifying the precise points at which disproportionality occurs in the criminal justice system. It is with this in mind that we pursued a collective response through the development of multi-agency workshops with key

stakeholders. Some of the emergent themes from these events are highlighted below.

Analysis of the personal, social and criminogenic needs of care leavers in the criminal justice system illustrates that they are more likely to experience a range of problems, which serves to exclude them from participation within mainstream society.<sup>7</sup> For example, when compared to the generic offender population, the needs of care leavers emerge as more pronounced, particularly in relation to accommodation, education, training and employment, relationships and emotional needs.<sup>8</sup> Yet the accumulative effects of (negative) care experiences with accompanying socio-economic problems can merge to construct care leavers as problematic, 'risky' and therefore undeserving of supportive criminal justice interventions. Furthermore, once in the criminal justice system their previous status as vulnerable and in need of support, becomes renounced for that of the risk-posing offender requiring management or containment. From the outset then, we acknowledge there is a clear tension in how the agencies of the criminal justice system should respond to the 'needs' of those with care experience within a system largely concerned with risk assessment and risk management.<sup>9</sup>

Paradoxically, under relevant legislation, looked after children and care leavers in the criminal justice system, including those in custody, have various entitlements. For example, those care leavers identified as 'relevant' or 'former relevant' young people under the fairly restrictive definition of the Children (Leaving Care) Act 2000 are entitled to be kept in touch with by their local authorities, as well as to

1. In this article we define looked after children as those under the age of 18 who are currently in the care of the local authority subject to a full care order under section 31 or looked after by voluntary agreement under section 20 of the Children Act 1989, including those in residential, foster and kinship care in England. Meanwhile, care leavers are broadly defined as those aged 18 and above which includes those who may still be receiving a service under the rules of the Children (Leaving Care) Act 2000, as well as those who are living independently and may have left care some years ago.
2. Taylor, C. (2006) *Young People in Care and Criminal Behaviour*, Jessica Kingsley.
3. Department for Education (DfE) (2014a) *Outcomes for children looked after by local authorities in England as at 31 March 2014*, SFR 49/2014, DfE.
4. Kennedy, E. (2013) *Children and Young People in Custody 2012-13: An analysis of 15-18 year olds' perceptions of their experiences in young offender institutions*. London: HMIP.
5. See also HM Inspectorate of Probation (2014) *Girls in the Criminal Justice System A Joint Inspection by: HM Inspectorate of Probation, Care and Social Services Inspectorate Wales, Care Quality Commission, HM Inspectorate of Constabulary, HM Inspectorate of Prisons and Ofsted: HM Inspectorate of Probation*.
6. Harker, R. & Heath, S. (2014) *Children in Care in England: Statistics, SN/SG/4470*, House of Commons Library
7. Fitzpatrick, C. & Williams, P. (2014) *Examining 'Clear Approach': An intervention for care leavers on an intensive alternative to custody order: Report by Lancaster University and Manchester Metropolitan University for the Care Leavers' Association*.
8. *Ibid* n.7.
9. Hudson, B. (2003) *Justice in the Risk Society: Challenging and Re-affirming 'Justice' in Late Modernity*. Sage.

have, amongst other things, a personal advisor and a 'pathway plan' which is maintained and reviewed.<sup>10</sup> Yet all too often those who have previously been in care are an 'invisible minority'<sup>11</sup> in the criminal justice system.

This has been highlighted particularly starkly by recent deaths in custody, including the death of 17 year old Ryan Clark who took his own life in Weatherby Young Offender Institution (YOI) in April 2011. Ryan had been in care since he was 16 months old,<sup>12</sup> and the inquest into his death in January 2014 found that a series of failures contributed to Ryan's death. Firstly, the extent of his vulnerability was not picked up on from relevant documents. In addition, not all support that could have been available for him was provided — including the personal officer scheme, where an officer is allocated to a young offender on arrival in custody to provide support. Furthermore, the YOI's scheme to address bullying and intimidation was ineffective.<sup>13</sup> The inquest heard from Jane Held, Independent Chair of Leeds Safeguarding Board, that the system failed Ryan as a 'looked after' child. She said that during the last 12 months of his life, there was no single consistent professional responsible for him, his housing situation prior to his remand was dire, his care plan was insufficient, and he was treated as 'troublesome' rather than 'troubled, vulnerable and emotionally damaged'.<sup>14</sup>

The tragic suicide of 15 year old Alex Kelly at HMYOI Cookham Wood in January 2012 raises some disturbingly similar issues, particularly relating to the sharing of information about individual vulnerability. Alex had been living with foster carers since 2002, and the serious case review into his death<sup>15</sup> highlighted various failures in communication between relevant professionals.

*'The most significant weakness in Child F's case was in the working relationship between the health service, the mental health service and prison officers in the YOI. If mental health practitioners had been aware of and taken proper account of the behaviour described in the records of custody staff it is likely that they would have assessed Child F's risk of suicide and self-harm as being much higher' (2013:5.81).*<sup>16</sup>

Whilst deaths in custody obviously represent the extreme end of what can happen when things go wrong for

children in care and care leavers, they nevertheless raise a number of important issues that are relevant to many of those in prison today<sup>17</sup> with a care experience. As the Harris Review into self-inflicted deaths of young people in custody has recently concluded,<sup>18</sup> urgent and radical change is now required in order to improve the experiences of vulnerable young people.

### **Durable problems, practitioner concerns and emerging themes**

*..(I)n foster care I wasn't getting that much in trouble, but in care homes you get in more trouble, say if like you smashed a glass or whatever, they get you done for criminal damage and that's where it starts, your criminal record.*

(Joe, aged 24)

*I've had bad things done to me on the streets, where I've nearly been raped myself...People don't see what's actually happening on the streets...The people who don't have no families or people who are getting abused at home, badly abused, they're all in town, and they get mixed up with each other and they're getting forced into doing stuff like selling drugs and selling themselves to live to survive...Or getting sent to prison because they're scared of people on the streets...It might sound stupid, but people feel safe in prison. You've got three meals a day, you've got telly, you've got people what are going to watch you and make sure you're alright.*

(Jake, aged 23)

Although not a central focus of this paper there are a number of challenges in ascertaining the precise points at which care leavers come to the attention of the criminal justice system. The quotes above come from interviews with care leavers supervised on an intensive community order which we discuss further below.<sup>19</sup> What is clear is that many vulnerable young people still slip undetected through the 'gaps' of agencies and organisations that have a statutory responsibility to support those who have been in care. Indeed, work with 'looked after children' and care leavers within the criminal justice system over recent years has

10. Children (Leaving Care) Act 2000, <http://www.legislation.gov.uk/ukpga/2000/35>

11. Coyne, D. (2015) Effectively Abandoned: Care leavers in the Criminal Justice System, The Care Leavers' Association.

12. Leeds Safeguarding Board (2015) Serious Case Review in Respect of Ryan Clark (Child V): Overview Report, Leeds Safeguarding Board.

13. Puffett, N. (2014) 'Ryan Clark verdict highlights youth custody failings', Children & Young People Now, 29 January 2014.

14. Ibid n. 13.

15. Tower Hamlets Safeguarding Children Board (2013) Serious Case Review Executive Summary, Services provided for Child F, June 2004 – January 2012, Tower Hamlets Safeguarding Children Board.

16. Ibid n. 13.

17. See also INQUEST (2015) Stolen Lives and Missed Opportunities: The deaths of young adults and children in prison. A report for The Barrow Cadbury Trust.

18. The Harris Review (2015) Changing Prisons, Saving Lives: Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds, Cm 9087.

19. Ibid n.7 (see p.2 of the report for a discussion of methodology).

highlighted a number of reoccurring and durable problems which hinders effective practice.<sup>20</sup> It is with this in mind that we initiated two multi-agency roundtable discussions in Lancashire which were designed to place the issues facing children in care and care leavers in the criminal justice system firmly on the policy and practice agenda. These events took place in the autumn of 2014 and the spring of 2015.<sup>21</sup>

The two workshops brought together a total of 49 stakeholders from a range of relevant organisations from across the North West and beyond. These included: Children's Services, Youth Justice, the National Probation Service, Cumbria and Lancashire Community Rehabilitation Company, HM Prison service, The Magistrate's Association, the Police, Barnardo's, Child Action North West and The Children's Society. It was significant that the events included representatives from agencies and organisations with responsibility for care leavers and looked after children. That the events were developed in a spirit of collective responsibility, rather than the allocation of blame, facilitated a collegiate response to the subject.

A number of key themes and challenges emerged as a result of our discussions, and in the space available below, we focus on two of these key themes — that of identification and promoting a cultural change. It is important to note that the challenges we discuss are not particular to the North West but relevant to criminal justice organisations and institutions across the country.

From the outset, a reoccurring problem is how to identify looked after children and care leavers in custody and the community, so that criminal justice workers can ensure that these vulnerable individuals receive the support to which they are entitled. Whilst the development of official NOMS practice guidance<sup>22</sup> on working with care leavers has enabled the government to suggest in its one-year update to the Care Leaver Strategy that this is an issue that has now been dealt with,<sup>23</sup> the reality is that identification remains a real challenge for some key stakeholders. This was a key theme to emerge throughout our multi-agency discussions where it was noted for example that identification in the secure estate is 'not fit for purpose'. The Harris Review recently referred to the serious 'disconnect between what those in charge think should be happening and what is

actually happening'<sup>24</sup> and this can similarly be seen to apply in the case of identifying, and then supporting, those in the criminal justice system who are, or who have previously been, in care.

Furthermore, recent research by two of us on a pilot project for care leavers supervised in the community on an Intensive Alternative to Custody (IAC) order has highlighted some of the difficulties surrounding the identification of care leavers in a probation service context.<sup>25</sup> During interviews with practitioners, it was found that care leavers were often perceived as a particular risky client group. This was partly due to the complexity of personal, social and criminogenic need that some care leavers present with and more significantly a lack of practitioner knowledge/understanding about care issues.

*Cos if I'm honest I knew nothing about this as an agenda item until I spoke to Jason about care leavers — we didn't even capture this as a piece of information with our clients.*

(Stakeholder 10<sup>26</sup>)

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In addition, the problem of identification was compounded by the fact that some stakeholders felt fearful and somewhat ill equipped to raise the 'care' question in the first place (in other words, trying to identify care leaver status). This was due to concerns over whether previous experiences of abuse, or a

'can of worms' as articulated by one practitioner in interview, might be disclosed which already over-stretched practitioners would then be obliged to respond to.

A further issue relates to the extent to which a young person with a history of being failed by state control systems is confident in the practitioner's competence to understand, acknowledge and then to appropriately respond to disclosures of care. The failure of practitioners to ask the care question and their lack of awareness of the entitlements of those with care experience may serve to reaffirm the young person's lack of belief in the practitioner and thus undermine the supervision process. This raises the important issue of training, and delegates at our workshops highlighted that there was a real need for key stakeholders to receive sufficient training about the needs and entitlements of

20. Ibid n.11.

21. These events were hosted jointly by Lancaster University and The Care Leavers' Association, and we are grateful to the Lancaster University FASS Enterprise Centre for funding these events.

22. NOMS (2013) Practice Guidance: Working with Care Leavers (18-25), in custody and the community, to reduce reoffending and promote effective transition to adulthood, London: NOMS.

23. HM Government (2014) Care leaver strategy: One year on progress update, October 2014. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368235/Care\\_Leavers\\_Strategy\\_update.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368235/Care_Leavers_Strategy_update.pdf)

24. Ibid n18, page 10.

25. Ibid n7.

26. Ibid n7, page 15.

looked after children and care leavers. A lack of knowledge (and sometime confidence) in dealing with care issues was highlighted as an issue not just for practitioners within the secure estate, but also for magistrates in the court room and those working in probation. Questions were also raised about the issue of multi-agency working and data sharing. Where looked after child or care leaver status is identified, to what extent is this information then shared across relevant organisations?

The needs of care leavers was a key area of discussion during our roundtable events, where it was suggested that the identification of needs must be led by the young person. However, young people also need to know what leaving care support they are entitled to in the first place, and who to speak to if they do not get it. Having a named person to support a young person through the leaving care/criminal justice process could help with improving transitions and building consistent and trusting relationships. Yet there are challenges here too, not least in finding appropriate accommodation for vulnerable young people who may have complex needs. The age of 18+ was identified as a 'cliff edge', with many having urgent housing needs. Yet this is true for some 16 and 17 year olds across the UK<sup>27</sup> who continue to be housed in unsafe and completely inappropriate accommodation.<sup>28</sup>

Returning to the issue of identification, it is essential to consider if looked after child or care leaver status is identified, what action is then taken as a result of this information? In other words, is the care question simply perceived as part of a wider data collection/monitoring exercise or does it actually have real-world consequences, (that go beyond demonstrating the existence of a 'care to prison' pipeline<sup>29</sup>)? This raises the question of what specific interventions are available, and different approaches to engaging and working with looked after children and care leavers. In theory, data monitoring should be used to inform the type of intervention that the individual under supervision should undertake. Where there are no interventions, then data monitoring becomes a simple tick-box exercise. However, the offensive nature of purely 'tick-box approaches' needs to be challenged. What is the point in identifying someone's care status without being able to offer some level of support?

### Strategies for change

The durability of the problems encountered by care-experienced individuals within the criminal justice system

illustrates a resilience to (policy) change. The barriers which hinder the identification and resolution of these problems allude to the need for a more systemic and cultural shift in the constructs and perceptions of looked after children and care leavers. As suggested at the outset of this paper, responding to the 'needs' of vulnerable individuals within a risk-obsessed criminal justice system is perhaps the most impenetrable of the themes to emerge from practitioners.

Yet there are ways of providing support. For example, the Barnardo's advocacy service for children and young people in the secure estate<sup>30</sup> is a national programme that aims to represent the views, wishes and feelings of all children and young people locked up. Meanwhile, in the North West of England there is emerging evidence that specific and targeted support programmes for care leavers within the criminal justice system are empowering and supportive to the individuals involved.<sup>31</sup> Our research on the pilot phase of the 'Clear Approach' intervention for young males aged 16 — 25 on an intensive community order included interviews with six care leavers.<sup>32</sup> Clear Approach is designed to be an empowerment programme where looked after children and care leavers have the opportunity to engage (on a voluntary basis) in one-to-one sessions as well as group work in order to explore the relationship between care and offending.<sup>33</sup>

The intervention takes place across a ten week period and has the dual aim of offering emotional support and advocacy, whilst also offering to practitioners very specialist (almost paralegal) support. Clear Approach aims also to ensure that young people are aware of their rights and entitlements under the Children (Leaving Care) Act 2000, and receive the support that that they are entitled to. In terms of outcomes, one 19-year old participant gained access to the leaving care worker that he was entitled to, as well as receiving a leaving care grant of over £1600 as a result of his involvement in the intervention. Another found voluntary work experience as a result of his involvement in the project. Others described valuing the chance to talk and particularly the user-led focus of the project.

*I like it yeah, forces out my confidence, because before I done care leavers' group...I had no confidence.*

(Jake, aged 23)

*Because he [CLA worker] knows what we're talking about...'Cos if say no one's been in care and you're talking to them, they don't know how*

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27. CELCIS Inform (2015) Housing Options and Care Leavers: Improving Outcomes into Adulthood, A Centre for Excellence for Looked after Children in Scotland (CELCIS) Briefing (July 2015).
28. Abrams, F. (2015) Care leavers placed in 'unsuitable' accommodation, BBC News, <http://www.bbc.co.uk/news/education-32954649>
29. Blades, R., Hart, D., Lea, J. & Wilmott, N. (2011) Care – a stepping stone to custody? The views of children in care on the links between care, offending and custody, London: The Prison Reform Trust.
30. For further details, see [http://www.i-hop.org.uk/app/answers/detail/a\\_id/559/~barnardos-advocacy-service-\(secure-estate\)](http://www.i-hop.org.uk/app/answers/detail/a_id/559/~barnardos-advocacy-service-(secure-estate))
31. Ibid n.11.
32. Ibid n.7.
33. 'Clear Approach' is an intervention developed and delivered by The Care Leavers' Association.

*you feel and they don't know how it is in care 'cos they've never been in that situation. So...if someone else has been in care themselves, then obviously they'll understand where you're coming from. So that was pretty helpful as well.*

(Joe, aged 24)

*(I)t was important because I felt like he knew where I was coming from and that's something we need, like someone who's been through what we've been through so you can talk to them on a level.*

(Max, aged 19)

For Joe and Max, the merits of the intervention were located in its capacity to reflect on personal experiences with somebody 'who knows what we're talking about'. Whilst these young men were being supervised on criminal justice orders in the community, it is arguable that there could be similar benefits for young people from user-led support in custody. Here, the use of peer to peer custody-based group mentoring could offer significant individual and group support to care leavers, with the focus on a user-led approach whereby those with previous experience of the care and criminal justice systems are trained as mentors. Where such approaches are underpinned by the principles of empowerment and self-determination,<sup>34</sup> peer mentoring has the potential to provide a 'safe space' for those care leavers, often lost in the criminal justice system, to realise their own life choices and understand past experiences. Facilitating individuals to frame and re-frame their own life story and to take ownership of it can increase self-esteem and confidence levels. The desistance literature clearly highlights this as an essential element of supporting offenders to become ex-offenders and make positive life choices,<sup>35</sup> assisting them in 'travelling more hopefully'<sup>36</sup> on the road to desistance.

Of course being 'user-led' alone is not enough and the benefits are not automatic.<sup>37</sup> Indeed, it is crucial that mentors have a body of knowledge that goes beyond personal insight, including knowledge about leaving care legislation and relevant entitlements. If this is used well it

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can complement the user insight and inspire the collective to take ownership in pushing for change. Notwithstanding some of the challenges in recruiting and retaining mentors,<sup>38</sup> and obtaining the buy-in of custodial institutions to support a peer mentoring group, there is undoubtedly merit in considering this as a supportive strategy for care leavers. Trained mentors with the specific skills could also be employed in custody settings to offer practitioner training with offender supervisors, case managers and other relevant staff in order to assist with identification, risk management and support.

The types of interventions described above have obvious potential. Yet until practitioners and criminal justice resource brokers address the challenges of identification, through ascertaining care or care leaver status and recording and sharing this data between agencies, then such

interventions and support will be underutilised. This problem can only be resolved by getting relevant stakeholders and agencies to talk to each other, which is no easy task, but of crucial importance for individuals who move between a number of different state care and control systems. One outcome of the previously mentioned roundtable discussions is that we have established a new working group in Lancashire that aims to reduce the number of looked after children and care leavers in the criminal justice by sharing good practice, identifying gaps and working towards a multi-agency

focused action plan. Whilst there are inevitably challenges in ensuring that all relevant parties are sat around the table at each meeting, there is also a commitment from those who do attend to improve outcomes and ensure that those already in the criminal justice system are aware of their rights and entitlements. It is arguable that the very existence of such a working group can be of benefit locally and regionally in ensuring that the issues facing children in care and care leavers in the criminal justice system remain firmly on the agenda.

### **Final Thoughts: Promoting a cultural change**

Rather than offer a definitive conclusion, we purposely finish now with some final thoughts. In fact, to offer a

34. One example of this is the 'Foundations' peer mentoring project developed by The Care Leavers' Association.

35. Maruna, S. (2001) *Making Good: How ex-convicts reform and rebuild their lives*, Washington D.C.: American Psychological Association.

36. Weaver, B. and McNeill, F. (2010) 'Travelling hopefully: Desistance Research and Probation Practice'. In: J. Brayford, F. Cowe and J. Deering (eds) *What Else Works?: Creative Work with Offenders*. Cullompton: Willan; 36-60.

37. For example, see Lushey, C.J. & Munro, E.R. (2015) 'Participatory peer research methodology: An effective method for obtaining young people's perspectives on transitions from care to adulthood?' *Qualitative Social Work*, 14:4:522-537.

38. *Ibid* n.11.

conclusion would be to imply that the issues we have raised above can be neatly dealt with. But they cannot. One of the key themes of this article is that the attitudes, challenges and problems that we have highlighted are enduring. They are persistent and perennial problems that require a sustained and consistent effort in order to be overcome.

In our view, vulnerable young people with experience of the care system ought to be diverted from the criminal justice system wherever possible, particularly given current concerns about the unnecessary criminalisation of some individuals in care for minor offences.<sup>39</sup> However, the strategies that we have suggested above aim to improve the support provided to those already in the criminal justice system, and potentially empower them. Yet there are other sorts of strategies too that involve changing the current system so that looked after children and care leavers are far less likely to find themselves in the criminal justice system in the first place. For this to occur, we believe that a cultural change is required in order to address the current lack of political will to address care and care leaver issues in a consistent and sustainable way.

In the space remaining, we wish to simply flag up two key strategies for change. Firstly increasing the minimum age of criminal responsibility so that we fall more in line with our European neighbours<sup>40</sup> — such an approach would not only be more consistent with the evidence on children's neural development and behaviour,<sup>41</sup> but would also help to immediately reduce the numbers of children who can be formally involved in the justice system. Secondly, increasing the leaving care age to 25 would ensure that care leavers receive far less of a compressed and accelerated transition to independence in comparison to many of their peers in the

general population. This could also serve to reduce the continued failures by some local authorities to provide adequate and appropriate after-care support, whilst simultaneously reducing the number of pathways that individuals may take from 'care' to custody. With the National Audit Office's recent report<sup>42</sup> concluding that services for care leavers have now deteriorated for seven consecutive years due to financial cuts and poor management, with many leaving care before the age of 18, contrary to the government's legal obligation, such a policy change is arguably long overdue.

The above recommendations might seem naively optimistic in the current political climate where a 'populist punitiveness'<sup>43</sup> prevails, yet in our view such optimism is greatly needed as is the cultural change that we speak of. Despite the pockets of good practice that do exist and can be found around the country, and despite the collective aspirations of the great majority of stakeholders at our multi-agency workshops to improve outcomes, there remains a persistent problem with stigma and stereotyping of care leavers in the criminal justice system. This is probably best demonstrated by the comments of a senior stakeholder from HM Prison Service at one of our recent roundtable events, who confidently announced to an audience that included a number of individuals with care experience, that in their view, 'care leavers lack empathy'! Such negative stereotypes undoubtedly perpetuate the damaging myths that those who have been in care must be viewed and treated as troublesome rather than as vulnerable young people in need. There can be little doubt that without a radical shift in such attitudes, the various challenges that we have outlined above will continue to endure.

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39. House of Commons Justice Committee (2013) *Youth Justice: Seventh Report of Session 2012–13. Volume I: Report, together with formal minutes, oral and written evidence.* London: The Stationery Office.

40. Goldson, B. (2013) 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales, *Youth Justice* 13: 2: 111-130.

41. Delmage, E. (2013) 'The minimum age of criminal responsibility: A medico-legal perspective', *Youth Justice*, 13:2:102-110.

42. National Audit Office (2015) *Care leavers' transition to adulthood*, Department of Health, <http://www.nao.org.uk/wp-content/uploads/2015/07/Care-leavers-transition-to-adulthood.pdf>

43. Bottoms, A. (1995) *The Philosophy and Politics of Punishment and Sentencing.* In C.Clarkson & R.Morgan (Eds.) *The politics of sentencing reform* (pp. 17–49), Oxford: Clarendon Press.