

# #16

## Dare to Care: Representing care experienced young people

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**This guide will support criminal lawyers  
representing care experienced children and  
young adults to:**

- understand the relevant legal framework
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- achieve better outcomes.

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All case studies and quotes have been anonymised but are based on real life examples of care experienced young people.

This guide uses the following terms:

- Being in care: where a child is a “looked after” child or on a care order imposed by the court under the Children Act 1989.
- Care experienced: we use the term “care experienced” to describe anyone with experience of being in care at some point in their lives.
- Child / Children: under 18 year olds (as defined by Article 1, of the UNCRC and section 105 of the Children Act 1989).
- Young adult: 18 – 25 year olds, although it is acknowledged that young adults are still maturing well into their mid/late 20s.

# Why knowing about care experience matters

*‘The care experienced part of my identity was never known.’*

Care experienced children are up to six times more likely to be criminalised than other children.<sup>1</sup> Just over half of care experienced children will have a criminal conviction by the age of 24, compared to just over a tenth of their non care experienced peers of the same age.<sup>2</sup> Care experienced children are over 10 times more likely to have received a custodial sentence than children who have not

been in care.<sup>3</sup> In 2022, just 1% of children in England were in care, but 59% of children in custody in England and Wales were care experienced.<sup>4</sup>

Lawyers should be aware of the duty to prevent the unnecessary criminalisation of looked after children and care leavers.<sup>5</sup> A prosecution may not be proportionate because of their care experience.

## Practical tips

Lawyers should ask:

- has the child or young adult been arrested or charged as a consequence of being care experienced?
- is it in the public interest to prosecute them?
- how should they be supported at the police station, during their case and at court?
- is their care experience relevant to any potential defences and legal arguments?
- should their care experience entitle them to a reduction in their sentence?

- 1 ‘In care, out of trouble: how the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system. An independent review chaired by Lord Laming’. Prison Reform Trust, 2016, [bit.ly/45v05il](https://bit.ly/45v05il). The review found that children in care are six times more likely than other children to be cautioned or convicted of an offence
- 2 ‘The education background of looked-after children who interact with the criminal justice system: December 2022’. Office for National Statistics (ONS), 2022, [bit.ly/3oqlyeF](https://bit.ly/3oqlyeF) – 52% of care experienced young people received a criminal conviction by age 24, compared with 13% of their non care experienced peers of the same age
- 3 ‘The education background of looked-after children who interact with the criminal justice system: December 2022’, ONS, 2022, [bit.ly/3oqlyeF](https://bit.ly/3oqlyeF)
- 4 ‘Disrupting the routes between care and custody for girls and women’, C Fitzpatrick, K Hunter, J Shaw and J Staines, published by Lancaster University, Liverpool John Moores University, University of Bristol and the Nuffield Foundation, 2022, [bit.ly/3qdQRK7](https://bit.ly/3qdQRK7); ‘Children in custody 2021–22: an analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions’, HM Inspectorate of Prisons, 2023, [bit.ly/3owkk7Q](https://bit.ly/3owkk7Q)
- 5 ‘The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers’, Department for Education (DfE), Home Office and Ministry of Justice (MoJ), 2018, [bit.ly/436TWtZ](https://bit.ly/436TWtZ), para 2.2

# Why are care experienced young people over-criminalised?

The police, Crown Prosecution Service (CPS), courts and defence lawyers should examine how and why any care experienced suspect has come to be criminalised. This should inform how the case is dealt with and influence the outcome.

Care experienced children are known to:

**Be more likely to be put in situations where they come into contact with the police** – there are far more frequent police call-outs by carers and staff in children’s homes than for children living in a family setting.

*‘When living at a children’s home, I got into a verbal argument with a member of staff. As a form of retaliation, the member of staff called the police. This was frustrating as it felt like the staff member was calling the police as a form punishment for arguing or sharing your opinion.’*

**Be subject to additional restrictions and requirements in care settings** – this may lead them to come into conflict with the law.

*‘I went out one evening [and got arrested just for being with my friend] ... I was late back and didn’t report properly to my foster carer ... because it was a lot of hassle and my friend’s parents would have had to talk to the carer and that made me feel uncomfortable. This caused my carer to then notify the police ... They would never have done that to their biological child.’*

**Be more likely to have experienced trauma and adverse experiences than other children** – this is an important context to their behaviour.

**Have much higher levels of mental health needs than in the general population** – neurodiversity and mental health needs are often undiagnosed.<sup>6</sup> At least four in five care experienced children who receive a custodial sentence have a special educational need (SEN).<sup>7</sup> Looked after children and care leavers are between four and five times more likely to attempt suicide in adulthood.<sup>8</sup>

6 92% of children with underlying neurodisability and/or communication need are undiagnosed when they enter the criminal justice system, ‘Language and communication difficulties in juvenile offenders’, Bryan et al, International Journal of Language & Communication Disorders, 2007; ‘Oral Language Competence in Incarcerated Young Offenders’, Snow and Powell, International Journal of Speech-Language Pathology, 2011

7 ‘The education background of looked-after children who interact with the criminal justice system: December 2022’, ONS, 2022, [bit.ly/3oqlyeF](https://bit.ly/3oqlyeF) – 92% of care experienced children who received a custodial sentence by the age of 24 were identified as having special educational needs (SEN)

8 ‘Neglected minds: a report on mental health support for young people leaving care’, N Smith, Barnardo’s, 2017, [bit.ly/30GC0j0](https://bit.ly/30GC0j0) – 45% of looked after children (and 72% in residential care) have a mental health disorder – compared to 1 in 10 in the general population

*'In the children's home, I had only just received my diagnosis of autism. I was struggling to understand and finding it difficult to cope, one evening I smashed up my room. Luckily the care home manager, Susie, understood about my diagnosis and didn't call the police, even though it prevented the home making an insurance claim for the damage. Looking back, Susie changed my life forever.'*

## **Be targeted by criminal gangs, and may be victims of child criminal exploitation (CCE).<sup>9</sup>**

*'I saw other young people I lived with going into gangs and eventually becoming homeless ...'*

**Generally have less support in place** – the transition to adulthood can be very difficult for anyone, and care leavers are often expected to start this process at a younger age.

*'When I did leave care I had so many issues because I was no longer living in the area I was put into care. I felt I had no support ...'*

**Be seen as more mature than their actual age and elicit less sympathy from professionals and harsher responses from the criminal justice system** – this process is recognised as 'adulthoodification' (see below).

*'I was pushed out of care and there was no emphasis on being supported and cared for.'*

**Experience intersectional disadvantage** – care experienced children and young adults frequently face cumulative disadvantages.

- Black, Brown and racialised children are over-represented amongst those in care.<sup>10</sup> Children who are mixed heritage are twice as likely to be care experienced than their white or Asian peers.<sup>11</sup> Black children are also more likely to be care experienced.<sup>12</sup>
- Care experienced girls are 25 times more likely to receive a custodial sentence than children who have not been in care.<sup>13</sup> Research demonstrates how focusing on care-experienced girls' well-being is essential if their involvement in the youth justice system is to be reduced.<sup>14</sup>

*'I was 19 and shopping with my friends. By accident I walked out of the shop holding an umbrella. I was clearly holding it and wasn't trying to hide it. I had no intention of stealing it, but no one believed me. In the end I got a caution. Every time I applied for a new job, I'd have to explain myself, luckily my employers haven't held it against me. I think I wasn't believed because I am Black and had been in care. I had no one who took my side and no one to stand up for me. It was easier just to accept the caution.'*<sup>15</sup>

9 A report by Crest Advisory, a consultancy dedicated to crime and justice, found that looked after children are disproportionately represented in county lines networks (where illegal drugs are transported from one area to another, usually by children or vulnerable people who are coerced into it by gangs), but they are not being systematically identified by police or local authorities ('County lines and looked after children', 2020, [bit.ly/3oCaabn](https://bit.ly/3oCaabn))

10 'Ethnicity facts and figures: Adopted and looked-after children', DfE, 2021, [bit.ly/3OGCLec](https://bit.ly/3OGCLec)

11 'Ethnicity facts and figures: Adopted and looked-after children', DfE, 2021, [bit.ly/3OGCLec](https://bit.ly/3OGCLec)

12 'Ethnicity facts and figures: Adopted and looked-after children', DfE, 2021, [bit.ly/3OGCLec](https://bit.ly/3OGCLec)

13 'The education background of looked-after children who interact with the criminal justice system: December 2022', ONS, 2022, [bit.ly/3oqlyeF](https://bit.ly/3oqlyeF)

14 Looked after children and custody: a brief review of the relationship between care status and child incarceration and the implications for service provision', T Bateman, AM Day and J Pitts, published by University of Bedfordshire and Nuffield Foundation, 2018, [bit.ly/3MASOrt](https://bit.ly/3MASOrt). 'We Need to Tackle Their Well Being First': Understanding and Supporting Care-Experienced Girls in the Youth Justice System', Staines, J, Fitzpatrick, C, Shaw, J & Hunter, K, Youth Justice, 2022 at <https://bit.ly/463fSaA>

15 Criminal records are complicated – youth cautions imposed on under 18-year-olds should always be filtered (deleted) from a criminal record and adult cautions for less serious offences should be filtered (deleted) after six years. For more information, visit Unlock, an organisation supporting and advocating for people with criminal records to be able to move on positively in their lives, at [bit.ly/3BUevOp](https://bit.ly/3BUevOp)

# Adultification

*'The concept of adultification is when notions of innocence and vulnerability are not afforded to certain children. This is determined by people and institutions who hold power over them. When adultification occurs outside of the home it is always based on discrimination and bias.'*<sup>16</sup>

## Practical tips

Lawyers of care experienced young people should:

- ensure that 'The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers'<sup>17</sup> is followed
- argue that care experienced children and young adults shouldn't be criminalised if their offending has arisen as a result of being in care
- consider whether a psychological or psychiatric assessment may help understand the context of a care experienced person's behaviour
- identify and make use of the modern slavery defence<sup>18</sup>
- ensure that the impact of leaving care is understood by the police, the CPS and the courts, who have a duty to take this into account<sup>19</sup>
- explain the adverse impact of a criminal record for a care experienced person<sup>20</sup>
- ensure girls receive gender-specific, trauma informed support and interventions
- identify adultification, explain the concept to decision-makers and obtain evidence, in order to reframe the narrative.

16 'Adultification bias within child protection and safeguarding', J Davis, HM Inspectorate of Probation, Academic Insights 2022/06, 2022, [bit.ly/3WAE8gw](https://bit.ly/3WAE8gw)

17 'The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers', DfE, Home Office and MoJ, 2018, [bit.ly/436TWtZ](https://bit.ly/436TWtZ). See other national protocols such as 'All Wales Protocol: Reducing the criminalisation of care experienced children and young adults. Expectations for practice across agencies to reduce the unnecessary criminalisation of care experienced children (up to the age of 18) and young adults (up to the age of 25)' MoJ, Home Office and Welsh Government, 2022, [bit.ly/43sYJFL](https://bit.ly/43sYJFL); and local protocols such as 'Reducing criminalisation of looked-after children and care leavers: a protocol for London', Mayor's Office for Policing and Crime (MOPAC), 2021, [bit.ly/3WzA1kM](https://bit.ly/3WzA1kM)

18 s45 Modern Slavery Act 2015, see also YJLC's Child Criminal Exploitation legal guide, [bit.ly/426ayAF](https://bit.ly/426ayAF)

19 For example, police forces are expected to have multiagency local protocols to reduce unnecessary criminalisation of care experienced children and have 'links with local authorities and children's services to make sure appropriate support is in place to reduce the impact of transition': 'Child Centred Policing Best Practice Framework', National Police Chiefs' Council, 2021 <https://bit.ly/3Zaxb7h>. Sentencers have a duty to consider the impact of leaving care or having recently left care – 'sentencers should bear in mind any effect this often difficult transition may have had on the young person's behaviour': 'Sentencing guideline: Sentencing children and young people', Sentencing Council, 2017, [bit.ly/3hv309d](https://bit.ly/3hv309d), para 1.17. The CPS Legal Guidance recognises these principles apply when considering the public interest in charging decisions: Code for Crown Prosecutors, 'Legal guidance: Children as suspects and defendants', CPS, 2023, [bit.ly/3MDabi9](https://bit.ly/3MDabi9)

20 For more information see, YJLC info sheets on criminal records <https://bit.ly/45G8ge5> and 'Youth Criminal Records', Unlock, 2018, <https://unlock.org.uk/youth-criminal-records-report/>

# Identifying a care-experienced client

## Questions you can ask to work out whether a child or young adult has or should have 'care' status

Your client will usually be your best source of accurate information, provided you ask questions in the right way. It may be helpful to explain to your client that the information may help their case (but that you won't share any answers they give without getting their permission first).

Ask these questions of every client under 25:

- Living arrangements:
  - Where do you live?
  - Who do you live with?
  - Has it been arranged by someone from the local authority?
- Contact with social services:
  - Do you have or have you ever had a social worker or a personal advisor/16+worker?
- Care status:
  - Do you know if you have a formal 'care status'?
  - If so, do you know which 'section or sections' you are on or have been on in the past (for example, s20 of the Children Act)?
- Full care order / s31 Children Act 1989:
  - Have you ever been to court for a judge to decide where you live or who you live with?
- Looked after child / s20 Children Act 1989 / voluntary care:
  - Have you heard of 'LAC' (looked after child), 's20' or 'voluntary care'?
  - Have you spent any time 'on remand', in jail, Young Offender Institution (YOI), Secure Training Centre or children's home?
  - Have you ever had a 'LAC' or 'Looked After Child' Review or an IRO (Independent Reviewing Officer)?
  - Did you or your parents ever sign papers about going into care?
- Child in need / s17 Children Act 1989:
  - Have you ever had an assessment, sometimes called a 'child in need' assessment, with a social worker?
  - Have you ever had a care plan?
- Care leaver (eligible, relevant, former relevant or qualifying):
  - Have you ever been with the '16 plus team' or allocated a 'leaving care worker'?

- Have you ever had a pathway assessment or plan?
- Have you been remanded to custody for 13 weeks or more including one day on or after your 16th birthday but before you turned 18?
- Forgotten care leavers:
  - Were you ever homeless before you turned 18 (and if so, where did you live or stay)?
  - Did a social worker or a Youth Offending Team (YOT) / Youth Justice Services worker know about it or help you find the placement?
  - Were there any staff on site or other young people there?
  - Did it last for more than 13 weeks (and if so, how old were you during this time)?

If the answer to any of these questions is yes, then the child or young adult may be entitled to additional services and support under the Children Act 1989. A community care lawyer can help with this (see page 10).

- People who might know more:
  - Are there any other adults or professionals who may be able to provide information about your support needs and the help you have had in the past – for example, the youth justice service, the probation service, social workers, teachers, family members, mentors?
- Documentation that might help provide important background information:
  - Do you have any care plans, pathway assessments and plans, LAC Review minutes?
  - Have you ever had a Statement of Special Educational Need (SEN) or an Education and Health Care Plan (EHCP)?
  - Do you have any medical reports? Have you been seen by a psychologist or psychiatrist who might have prepared a report?
  - Are there any character references, school reports and Youth Justice Service reports that could help?

Ask the client for a signed authority to enable these documents to be requested; explain what you are asking for and why.

# Legal duties

Under the Children Act 1989, care experienced children and young adults are entitled to advice and support to meet their needs. This can include financial assistance, accommodation, emotional support, provision of therapy and anything else they need depending on their circumstances.

The support must be provided by the home local authority wherever the child or young adult lives. However, support under the Act is time limited and the entitlements reduce as a person gets older.

The police, CPS and the court have a duty to consider the fact that a person is care experienced and has leaving care rights when making decisions about a criminal investigation or case.<sup>21</sup>

In practical terms this should mean working to avoid a young person being in custody for any of the key milestone ages detailed below. Failing to abide by this duty could result in the child being deprived of their last opportunity for support.

The national protocol 'requires corporate parents to ensure that work across social care, placement providers, educational settings, health services, the police and other criminal justice partners, prevents unnecessary criminalisation'.<sup>22</sup> Additionally, the Sentencing Council's Children Guideline says sentencing decisions should take into account the impact on leaving care rights.<sup>23</sup>

21 'Where a child is looked after by the state, we have a responsibility to safeguard and promote their welfare and to act as good corporate parents so they can each reach their full potential. The United Nations Convention on the Rights of The Child includes preventing criminalisation of children and highlights the importance of this in protecting children. This is particularly true for children and young people with additional vulnerabilities such as looked-after children and care leavers. Ultimately the question we must ask is: "would this be good enough for my child?": 'The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers', DfE, Home Office and MoJ, 2018, [bit.ly/436TWtZ](https://bit.ly/436TWtZ), para 1.2. See also Appendix: Key Policy and Guidance for relevant police, CPS and Sentencing guidance

22 'The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers', DfE, Home Office and MoJ, 2018, [bit.ly/436TWtZ](https://bit.ly/436TWtZ), para 2.2

23 'For looked after children and young people who have committed an offence that crosses the custody threshold sentencers will need to consider any impact a custodial sentence may have on their leaving care rights and whether this impact is proportionate to the seriousness of the offence. For other young people who are in the process of leaving care or have recently left care then sentencers should bear in mind any effect this often difficult transition may have had on the young person's behaviour': 'Sentencing Children and Young People Guideline', Sentencing Council, 2017, para 1.17

24 This includes children who have not been recognised as a 'looked after' child but it can be argued should have been recognised as requiring 'looked after' status

25 s104 Legal Aid, Sentencing and Punishment of Offenders Act 2012

26 s104 Legal Aid, Sentencing and Punishment of Offenders Act 2012

27 Care Planning, Placement and Case Review (England) (Miscellaneous Amendments) Regulations 2013 SI No 706 amending the Care Planning, Placement and Case Review (England) Regulations 2010 SI No 959. See also 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review', DfE, 2010, last updated 2021, [bit.ly/3udUez7](https://bit.ly/3udUez7)

## Milestone ages

Failing to release a child or young adult from custody before each of these milestone ages will mean they are unable to access the support they are entitled to.

- **Turning 16:** a child who has been 'looked after'<sup>24</sup> for 13 weeks or more since the age of 14 will become entitled to leaving care rights.
- **Turning 18:** a young adult will no longer be entitled to be looked after but can be accommodated if they are a care leaver and their welfare requires it, or remain in foster care under the 'staying put' arrangements.
- **Turning 21:** a young adult will no longer be entitled to accommodation including foster care (unless they are in education) but can receive general support up to the age of 25 if they want it from social services.
- **Turning 25:** leaving care services will cease unless the local authority exercises its discretion to extend them. Unless the young adult is in education, in which case they will continue until the course ends.

## Types of care status

All children remanded to youth detention accommodation<sup>25</sup> or remanded to local authority accommodation become 'looked after children' and will be owed support by their home local authority. Every child remanded to youth detention accommodation will become 'looked after'<sup>26</sup> and should have a Detention Placement Plan.<sup>27</sup>

Types of care status are as follows:

- **Child in need** (s17 Children Act 1989): the local authority has assessed that a child requires support from social services and it must promote their welfare.
- **Full care order** (s31 Children Act 1989) (0 – 17 year olds): the child's local authority takes full responsibility for the child, where they live and how they will be cared for. Care orders are made by the Family Court, and last until the child turns 18 (unless discharged). A child on a full care order is also considered to be a "looked after child" (see below).

- **Looked after child** (s20 Children Act 1989) (0–17 year olds): a ‘child in need’ who requires accommodation.<sup>28</sup> This need for accommodation can be because there is no suitable accommodation available or their parent is unable to provide them with suitable care or accommodation for any reason, even if temporary. This can include the fact that the parental home is unsuitable e.g. it is in an area that a child cannot go to because of their bail conditions. The duty to provide accommodation is immediate.<sup>29</sup> Section 20 is sometimes called ‘voluntary care’, being “looked after” or becoming a “looked after child (LAC)”. For children under 16 years old, a parent has to consent to it; for 16 and 17 year olds, the child has to consent to it. The local authority has to promote the child’s welfare (this can include financial support) and provide suitable accommodation.<sup>30</sup> Looked after children should have care assessments and plans that are regularly updated and set out what their needs are and how they will be met.

## Care leavers

Care leaving provisions are designed to ease the transition into independent living for children leaving care. The term “care leaver” refers to anyone who has been in care as a child for 13 weeks or more on or after their 16th birthday. The idea is that if they have not returned home by this stage of their lives, they will need additional support as they move towards adulthood. Care leavers are entitled to different levels of support up to the age of 25. The government has published detailed statutory guidance setting out the duties owed to care leavers.<sup>31</sup>

The duties set out below are the minimum statutory requirements. Local authorities can provide more support. For example, local authorities have a discretion to provide accommodation to qualifying children or a service beyond the age of 25 if they wish.

- **Eligible child** (para 19B of Sch 2 Children Act 1989): 16- and 17-year-olds who are still looked after but will be entitled to support once they leave care as they have already been in care for 13 weeks or more after the age of 14.<sup>32</sup> Eligible children are entitled to everything a looked after child can have. In addition, within three months of their 16th birthday, they must be allocated a personal advisor who will support them into adulthood, a pathway assessment and plan setting out what their needs are and how they will be met. These documents must be regularly updated.

- **Relevant child** (s23A(2) Children Act 1989): 16- and 17-year-olds who are no longer looked after but were in care for 13 weeks or more after the age of 14. Within three months of their 16th birthday, relevant children must be allocated a personal advisor who will support them into adulthood, a pathway assessment and plan setting out what their needs are and how they will be met. These documents must be regularly updated. If a relevant child requires accommodation, they will become looked after again: this often happens when a relevant child is released from prison.
- **Former relevant child** (s23C Children Act 1989): 18- to 24-year-olds who were previously eligible or relevant children. They will have been a looked after child for 13 weeks or more since the age of 14 for at least one day aged 16 or 17. The local authority must provide care leavers with ongoing support including accommodation if their welfare requires it until the age of 21 and until 25 (if they are in education or training). All former relevant children are entitled to a personal advisor and a pathway assessment and plan setting out what their needs are and how they will be met.
- **Qualifying young person** (s24 Children Act 1989): 16- to 20-year-olds who were looked after for a day or more, are not owed full leaving care duties but are entitled to advice and guidance, which can include financial support depending on the needs of the young adult. While personal advisors and pathway assessments and plans are not a statutory requirement, there is a duty to provide support based on an assessed need. Therefore, it may be reasonable to ask for an assessment.

28 The Supreme Court has held that a ‘child in need’ who requires accommodation will become a ‘looked after child’. *R (G) v Southwark* [2009] UKHL 26

29 See for example, ‘Statutory guidance: Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation’, DfE, 2010. The guidance makes it clear that, where appropriate, the duty to provide section 20 accommodation is an absolute duty and must be actioned immediately, or at least on the same day where necessary to prevent homelessness, at para 3.4

30 s23 Children Act 1989

31 ‘Statutory guidance: Children Act 1989: Transition to adulthood for care leavers. Volume 3: Statutory guidance for local authorities on helping care leavers aged 16 and 17 prepare for adulthood’, DfE, 2010, last updated 2022, [bit.ly/3BYN7ib](https://bit.ly/3BYN7ib)

32 The 13 weeks do not need to be continuous

## Practical tips: information gathering to support your case

If the information you need – such as where a child or young adult will live and what support they would receive in the community – is not readily available, you should ask for it. If the child has a social worker or a care leaver has a personal adviser, whose contact details you have, you can ask them. Alternatively, with the consent of the child or young adult, you can write to the director for children’s services for their area. These contact details are available online.<sup>33</sup> Always enclose the child or young adult’s signed authority, their date of birth and either their last known address in the area or the name of their last social worker or personal adviser.

You may also ask for copies of assessments and plans that are legally required for care experienced children and young adults, although be mindful that these are not always up to date and often contain information that may not be relevant or helpful to your case.

## Documents and professional support care experienced people are entitled to:

Care status	Assessments/plans	Professional support
Child in need	Assessment of need Care plan	Social worker
Looked after child	Assessment of need Care plan Looked after child review minutes	Social worker Independent Reviewing Officer Children Rights Advocate
Looked after child due to be remanded in custody	Looked after child review minutes Detention placement plan	Social worker Independent Reviewing Officer Children Rights Advocate
Eligible child	Assessment of need Care plan Looked after child review minutes Pathway assessment Pathway plan	Social worker Personal advisor Independent Reviewing Officer Children Rights Advocate
Relevant child	Pathway assessment Pathway plan	Personal advisor
Former relevant child	Pathway assessment Pathway plan	Personal advisor
Qualifying child	Assessment of need and plan as to how needs will be met	Unspecified but contact is required by the local authority

<sup>33</sup> See Association of Directors of Children’s Services (ADCS), [bit.ly/3ODTVZZ](https://bit.ly/3ODTVZZ)

What a package of support might include:

- Accommodation:<sup>34</sup>
  - placement with a relative, friend or other person connected with the child and who is also a local authority foster carer
  - placement with a local authority foster carer (who is not a relative, friend or other person connected with the child) or a long-term foster placement
  - placement in a children's home or residential therapeutic placement
  - placement in accordance with other arrangements such as independent accommodation with floating support (note: 16 and 17 year olds should not be placed in bed and breakfast accommodation<sup>35</sup>).
- Support to safeguard and promote welfare:
  - general emotional and practical support including regular contact
  - therapy, counselling, mentoring and any other specific support required to meet a child's assessed needs
  - looked after children who stop being looked after because they have been sentenced to custody must receive visits from children's services.<sup>36</sup>
- Financial support, including:
  - pocket money
  - support with applying for benefits
  - subsistence (while waiting for benefits)
  - allowances for clothes or gifts for special occasions such as Christmas and birthday
  - travel cards
  - gym passes.

## Practical tips

Local Authority failures:

- If the failure of the local authority to provide support or meet any of your client's needs has contributed to the offence, then you should write representations that it is not in the public interest to prosecute. In certain circumstances, this might amount to an abuse of process.
- If the continued failure to provide support or meet these needs means your client might not get bail or a community sentence, contact a community care solicitor (see below).

## How to find a community care solicitor

Legal aid is available for community care law.

The Law Society's website offers a 'find a solicitor' service.<sup>37</sup> You can search for a community care lawyer by ticking the 'social welfare, health and benefits' box which then allows you to filter by area and community care specifically.

A number of solicitor's firms and organisations have particular experience of advising young people in the criminal justice system on community care issues. Organisations include:

- Coram<sup>38</sup>
- The Howard League for Penal Reform<sup>39</sup>

These organisations will suggest other solicitors if they cannot accept the referral.

34 s23ZA Children Act 1989

35 'Homelessness code of guidance for local authorities', Department for Levelling Up, Housing and Communities, 2018, last updated 2023, [bit.ly/3MYNclT](https://bit.ly/3MYNclT), para 22.27

36 s23ZA Children Act 1989; 'The Children Act 1989 Guidance and regulations. Local authority responsibilities towards former looked after children in custody', DfE, 2010, [bit.ly/428KpBe](https://bit.ly/428KpBe)

37 [bit.ly/3Ole9BZ](https://bit.ly/3Ole9BZ)

38 [bit.ly/3sM62eV](https://bit.ly/3sM62eV)

39 The Howard League's legal team runs a free, confidential legal service that can be accessed through their advice line: [bit.ly/43akYRh](https://bit.ly/43akYRh)

# Key requirements for lawyers

Care experienced children and young adults want lawyers who:

- Show compassion
  - 'I want a lawyer who asks how I am'
  - 'Lawyers who think about being a legal representative as "more than just a job"'
  - 'Our needs are complex. Professionals often lack humanity, compassion and can be dismissive but they need to show compassion and have awareness. Lawyers are just as responsible for that young person's life.'
- Use a trauma-informed approach<sup>40</sup>
  - Care experienced clients 'are likely to find contact with the justice system more traumatising because of their past experiences'.
  - 'We are all different. We go through different types of care but we all have trauma.'<sup>41</sup>
  - 'I have to tell my story again and again. It's long and upsetting every time' – avoid asking information about traumatic experiences if you can get the information elsewhere.
- Find out the context of the allegation
  - 'Get to know the young person. Find out their story. Treat them like a person not a criminal. Don't be judging. Be open with them so they can be open with you. Understand their context.'
  - 'Context can mean everything.'
- Have an awareness of the realities of the care system
  - Young people want 'lawyers who have an understanding of the lack of care in "care"'.
    - 'Lawyers who understand the systemic over-criminalisation of care experienced children and young adults.'
- Ensure that the child or young adult's voice is heard
  - 'I felt the judge was reading about me rather than hearing from me.'
  - 'I found it difficult to express how I felt.'
  - Bring the child's voice into the interview or court hearing. Use their words and avoid paraphrasing.

40 See YJLC's 'Trauma Informed Lawyering legal guide', [bit.ly/426ayAF](https://bit.ly/426ayAF)

41 Explore whether the allegation has arisen because your client's previous trauma has caused them to react in a certain way to a triggering situation – see YJLC's 'Trauma Informed Lawyering legal guide', [bit.ly/426ayAF](https://bit.ly/426ayAF)

# Achieving better outcomes

Lawyers have an obligation to prevent unnecessary criminalisation of looked after children and care leavers.<sup>42</sup> This requires finding out the context of any criminal allegation and seeking to avoid

criminalisation wherever possible. When children are required to be interviewed by the police or attend court, every effort should be taken to minimise the trauma of this encounter with authority.

At every stage, care experience should be presented as a mitigating factor.

*'I was 14 and I got into an argument with my Foster Carer. This led to me punching the bathroom door. My Foster Carer then called the police and I don't know what he said to them but the police came into the bathroom with riot shields. From that point on I felt like a criminal.'*

*'Getting a criminal record is like putting an invisible barrier in our way. Think twice before burdening a care experienced person with a criminal record.'*

*'Take all the background information into account as mitigation to ensure a care experienced person isn't disadvantaged when compared to their peers who have not had to overcome common experiences such as trauma, neurodiversity, lack of support network, unstable living situation, absence of care and support.'*

## Has your client been arrested or charged as a consequence of being care experienced?

- Has a carer / care home called the police in circumstances which would never have resulted in a police call out to a family home? Criminalising your client in these circumstances could be contrary to national and local protocols<sup>43</sup> and CPS legal guidance on children as suspects and defendants.<sup>44</sup>
- Are the police criminalising a child or young adult for behaviour triggered by childhood trauma or caused by their care experience (eg presence of other children or young adults with challenging behaviour, circumstances in care setting)?
- Is the criminal offence the consequence of the child or young adult's neurodiversity or other underlying need?
- Has this allegation arisen because the child or young adult is the victim of criminal exploitation? Have they been going missing? Have they had gang involvement? Has a National Referral Mechanism (NRM / modern slavery) referral been made?<sup>45</sup>
- Has the local authority's failure to meet your client's needs contributed to their contact with the justice system?

42 'The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers', DfE, Home Office and MoJ, 2018, [bit.ly/436TWtZ](https://bit.ly/436TWtZ), para 2.2

43 'The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers', DfE, Home Office and MoJ, 2018, [bit.ly/436TWtZ](https://bit.ly/436TWtZ); see [Appendix – Key policy and guidance for other national and local protocols](#)

44 'Legal guidance: Children as suspects and defendants' CPS, 2023, [bit.ly/3MDabI9](https://bit.ly/3MDabI9) – see [Appendix – Key policy and guidance](#)

45 See the YJLC's 'Child Criminal Exploitation legal guide', [bit.ly/426ayAF](https://bit.ly/426ayAF), for practical tips on how to approach these cases

## Is criminalisation disproportionate given the client's background and circumstances?

- Does the child or young adult's background and circumstances make them particularly vulnerable to involvement in the justice system such that criminalisation is not in the public interest?
- Would a criminal record have an adverse impact on future prospects?<sup>46</sup> Think about what work the young person wants to do or might want to do in the future and whether a criminal record will affect that.

If the answer to these questions is yes, you should make representations that the police and/or CPS should not proceed to charge, making use of the available guidance (see appendix below). It may be that the authorities can be persuaded not to criminalise your client if additional support can be provided by the local authority (see box below).

## Has the local authority met your client's needs and fulfilled its legal duties?

- Has the local authority failed to recognise your client's entitlement to accommodation and/or support?
- Has the local authority failed to provide a good enough service to meet your client's needs?
- If your client is a care leaver aged 18 to 20 (and up to 24 in education/training) and their welfare requires the provision of accommodation – has the local authority recognised its duty to provide it?
- For children on bail or released under investigation (RUI) – has the care plan been updated to address underlying issues and prevent future offending?<sup>47</sup>
- For children who become looked after as a result of being remanded to local authority accommodation – has a care plan and placement plan been prepared?<sup>48</sup>
- For children remanded to youth detention accommodation – has a Detention Placement Plan (DPP) been prepared?<sup>49</sup>
- Where a child is both remanded and sentenced to custody – has the local authority remembered it must continue to provide support to the child as a looked after child?

## Getting a full care package including suitable accommodation

Criminal solicitors may wish to work with a community care solicitor:

- to obtain suitable accommodation for a bail address
- to obtain advice on whether the local authority is meeting its duties to the child or young adult
- to ensure the child or young adult has the correct support package and, where appropriate, request a new placement.

Proper support in the community will reduce the risk of reoffending and may also mitigate the original allegation if it occurred due to lack of support or inappropriate accommodation.

Where the Local Authority fails to meet its duties, criminal solicitors may wish to refer their client to a community care solicitor (see page 10) to ensure they comply with their duties.

Criminal solicitors should also advise their clients that they can make a complaint to the Local Authority under the Children Act complaints scheme and eventually to the Local Government Ombudsman. Advocacy organisations can help with this.<sup>50</sup> Where there has been a particularly serious failure or the child has suffered harm as a result of promises not kept to a child in care, a compensation claim may be possible. A civil liberties/claims against public authorities solicitor will need to be contacted about this.

- 46 'The Code for Crown Prosecutors', CPS, 2018, [bit.ly/2OwSpfC](https://www.cps.gov.uk/publications/cps-code-for-crown-prosecutors), para 4.14(d):
- 'The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18.
  - The best interests and welfare of the child or young person must be considered, including whether a prosecution is likely to have an adverse impact on their future prospects that is disproportionate to the seriousness of the offending.'
- 47 This is required by 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review', DfE, 2010, last updated 2021, [bit.ly/3udUez7](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/90477/children_act_1989_guidance_volume_2_care_planning_placement_and_case_review.pdf), para 8.10
- 48 This is required by 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review', DfE, 2010, last updated 2021, [bit.ly/3udUez7](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/90477/children_act_1989_guidance_volume_2_care_planning_placement_and_case_review.pdf), paras 8.18–8.22
- 49 This is required by 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review', DfE, 2010, last updated 2021, [bit.ly/3udUez7](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/90477/children_act_1989_guidance_volume_2_care_planning_placement_and_case_review.pdf), paras 8.31–8.33
- 50 See Coram Voice, <https://coramvoice.org.uk/myrights/making-a-complaint-2/>

# Supporting care experienced children and young adults

## At the police station

- Ask for the child or vulnerable young adult to be de-arrested or bailed and attend a voluntary police interview at a later date.
- Care experienced young adults should be treated as 'vulnerable' to ensure they are given additional protections, such as an appropriate adult, to enable them to be able to understand and communicate effectively.<sup>51</sup>
- For children who face remand at the police station – try to ensure that they are transferred to local authority accommodation (request a certificate of inadequacy if transfer is not made).<sup>52</sup>
- Contact the child's social worker or personal advisor to make them aware of the child's detention – there is a duty to ensure a child is not disadvantaged by a refusal of bail because of their looked after status and where a child is remanded to actively work towards securing bail.<sup>53</sup> If you do not have the contact details for the allocated social worker and you urgently need a response, you can write to the Director of Children's Services for that local authority. The contact details are available online.<sup>54</sup>

51 Police and Criminal Evidence Act 1984 (PACE) Code C paras 1.4, 1.7A, 1.13(d) and Notes 1G, [bit.ly/30FIWPO](https://bit.ly/30FIWPO). Also see 'The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers', DfE, Home Office and MoJ, 2018, [bit.ly/436TWtZ](https://bit.ly/436TWtZ), para 8.1 – 'The home authority must ensure that the young person is:

- Legally represented by a solicitor with expertise in youth justice.
- Supported whilst at the police station by an appropriate adult...
- In addition to their carers, it is good practice for the child's social worker to attend court with them, particularly on the day of sentence, to ensure that the child's best interests are represented, that custody is used only as a last resort, and to act as a good parent would if their child was in court.'

52 s38 PACE 1984, also see YJLC's 'Police Bail and Remand legal guide', [bit.ly/426ayAF](https://bit.ly/426ayAF)

53 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review', DfE, 2010, last updated 2021, [bit.ly/3udUez7](https://bit.ly/3udUez7), paras 8.11, 8.22, 8.32

54 ADCS, [bit.ly/30DTVZZ](https://bit.ly/30DTVZZ)

55 Criminal Practice Directions 2023 (CrimPD) 6.4.1 and 6.4.2 ([bit.ly/3x0Jl3p](https://bit.ly/3x0Jl3p))

56 Criminal Procedure Rules (CrimPR) 3.9(a)(b) ([bit.ly/3x0Jl3p](https://bit.ly/3x0Jl3p)); CrimPD 6.1.1

57 CrimPD 6.4.2 d Where appropriate, the public gallery may also be restricted CrimPD 6.4.5

## Preparing for court

- Discuss beforehand how the child or young adult will get to court.
- Discuss beforehand who will come as their supporting adult (this may be a parent, carer, family member, family friend or social worker).
- Ensure that the court recognises a care experienced young adult's vulnerability so they receive adequate support.
- Ask the young person whether they have any concerns or worries about attending court – for example, what they will wear.
- Where possible, ask for a ground rules hearing and think about what adaptations will facilitate the effective participation of the child or young adult e.g. a court room all on one level, a court familiarisation visit, sitting unrobed, use of first names, positioning in court, seated with a supporting adult, adequate breaks, age appropriate language.<sup>55</sup>

## At court

- The 'court is required to take every reasonable step to encourage and facilitate the participation of vulnerable defendants'.<sup>56</sup> Ensure that young adult care leavers are recognised as vulnerable by the court so they receive adequate support to participate in the court process.
- Apply for the child or vulnerable young adult to be out of the secure dock and seated with their parent, family member or other supporting adult in a place that ensures easy, informal communication with legal representatives.<sup>57</sup>
- Consider whether the child or vulnerable adult need attend every court hearing. Attending court may be traumatising and it may be avoidable. Apply for their attendance to be excused if appropriate.

- Consider whether the child or vulnerable young adult would be assisted by an intermediary.<sup>58</sup>
- Consider other modifications/adaptations, for example: regular breaks, restricting public gallery etc.<sup>59</sup>
- Use the Advocate's Gateway toolkits<sup>60</sup> for helpful guidance – for example, a 'stop' card to indicate the need for a break, an 'understanding scale' for use with a lawyer.
- For children or young adults appearing at court having spent overnight from the police station – try to start making enquiries as early as possible with their social worker or personal advisor and inform the Youth Justice Service/Probation. There is a duty to ensure that a child is not disadvantaged by a refusal of bail because of their looked after status, and to actively support bail.<sup>61</sup>
- Ask for the social worker / personal advisor to attend court.
- If the child or young adult is not currently receiving support from social services but should be, you can make a child in need referral to the head of children's services asking for support. The email should include the child's full name, date of birth and last address in the area, as well as the name of any previous social workers and the subject line should say 'child in need referral – s17 Children Act 1989'. Alternatively, contact a community care lawyer.

## Legal arguments and defences

- Ensure that you have gathered all relevant contextual information to present to the court to explain the reasonableness of your client's actions. Consider whether expert reports may be needed.
- Apply for appropriate modifications and adaptations at court. In particular, ensure that your young adult client is considered a vulnerable defendant. Consider instructing an expert<sup>62</sup> such as a psychologist or psychiatrist to ensure that any underlying needs or neurodiversity are properly diagnosed and fully understood. Consider the following:
  - Is your client neurodiverse or do they have mental health needs or have they experienced adverse childhood experiences?
  - There may be fitness to plead and effective participation issues.
  - This may be relevant to issues such as intent and recklessness (see below).
  - This may be relevant contextual information to present to the court to explain the reasonableness of their actions (see below).
 Remind your client that instructing an expert does not mean that the report must be disclosed – this is an important aspect of the case where your client can have some agency: the report is private and confidential and should only be used with the client's permission.
- Has their care experience affected their culpability or provided a defence? Is it relevant contextual information to present to the court? Does past trauma, their neurodiversity or other mental health needs affect their *mens rea*?
  - Does the offence your client is charged with require specific intent or subjective recklessness (foresight of consequences)?
  - Does a possible defence have a subjective element or require an assessment of reasonableness (eg loss of control, duress, self-defence)?
  - Is the defence of diminished responsibility available?
 Ensure that you have gathered all relevant contextual information to present to the court to explain the reasonableness of your client's actions.
- Has your client been arrested for something that would never have been prosecuted if they were not care experienced (see p12)?
- Has the care home used force or restricted your client's liberty? Is self-defence available?
- Assess whether there are any indicators of criminal exploitation. Ensure a NRM referral is made and make representations that the CPS should not pursue the prosecution.
- Consider whether there is an abuse of process argument if the criminal allegation is a direct consequence of the local authority's failure in its duties. Or, is this relevant information to put before the court that may explain or contextualise your client's behaviour?

58 CrimPD 6.2.4 – 6.2.6 & 6.2.8 – 6.2.9 (and see YJLC's 'Intermediaries for Child Defendants legal guide', [bit.ly/426ayAF](https://bit.ly/426ayAF))

59 See YJLC's Criminal Practice Directions Guide

60 [bit.ly/2T0SVEM](https://bit.ly/2T0SVEM)

61 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review', DfE, 2010, last updated 2021, [bit.ly/3udUez7](https://bit.ly/3udUez7), paras 8.11, 8.22, 8.32

62 See YJLC's Instructing an expert legal guide

## 'We are not asking for favours, we are just asking for fairness'

For care experienced children and young adults, caselaw<sup>63</sup> and the Sentencing Council's Children Guideline<sup>64</sup> require the court to take into account the child's care experience (see checklist below):

Documentary evidence is always helpful. Consider obtaining:

- Education, Health and Care Plans (ECHP) – from school / place of education or local authority
- Social services assessments and care plans – from Children's Services
- Any referrals made to the National Referral Mechanism (NRM) (find out who made the referral and make a subject access request for it: it will often be the local authority)<sup>65</sup>
- School assessments or reports
- Reports or letters from Child and Adolescent Mental Health Services (CAMHS)
- Medical records – from GP
- Letters or statements from carers or workers from the voluntary sector – past and present: ask your client who really knows them and would be willing to provide something to show their potential.

Asking the child or their carers for this information may be the quickest way to get it. Otherwise, requests will need to be made with whoever owns the document.

Also consider:

- Whether to get an expert report from a psychologist or psychiatrist to inform the sentence.<sup>66</sup> Remind the child or young adult that, unless ordered by the court, such a report is prepared on a confidential basis and will only be disclosed if it helps the case and with the client's permission.
- Asking the child or young adult if they would like to write a note to court – this can be a good idea, but they should be supported to do this to ensure that it is written in a way that will support, and not undermine, the case for the fairest sentence.

Prepare a sentencing note setting out all the information the court should consider. Including:

- The court must have regard to the welfare of the child and the need to prevent further offending.<sup>67</sup>
- Set out the evidence as to how the welfare of the child can be better promoted with support from the local authority with the least restrictive sentence available.
- Custody should always be the last resort for a child. The sentence should reflect the age when the offence was committed, even if the child has turned 18 since then (R v Ahmed).<sup>68</sup>
- While the guidance on children has been written with under 18s in mind, the courts have decided that it can still be applied for young adults.<sup>69</sup> In the case of Kara Baldwin, the Court of Appeal said: 'The general principle that custody should be a last resort when a defendant is under the age of 18 will carry over to an 18 year old who is particularly immature.' Special considerations apply to a young adult being sentenced, which have now been embedded in the Sentencing Council's expanded explanation on 'age and/or lack of maturity'.<sup>70</sup>
- Explain the relevance of the child's age at the end of any sentence so the court can take into account leaving care rights. This is really important. A sentence of additional days that a child received in prison was struck down by the High Court purely because the sentence deprived the child of getting leaving care rights as he had just less than the required 13 weeks of being looked after and the sentence meant he would turn 18 before he could achieve this.<sup>71</sup>

63 See ZA v R [2023] EWCA Crim 596 for judicial guidance on the correct approach when sentencing children.

64 'Sentencing guideline: Sentencing children and young people', Sentencing Council, 2017, [bit.ly/3hv309d](https://www.sentencingcouncil.org.uk/wp-content/uploads/2017/06/3hv309d), paras 1.16–1.17

65 List of first responder organisation: [bit.ly/3oGk13U](https://www.sentencingcouncil.org.uk/wp-content/uploads/2017/06/3oGk13U)

66 All the information outlined above should be provided to the expert and they should be asked to factor in the impact of the child being in care on how they present and behave, as well as how authorities can better support the child in view of their needs in the future. See also the [Youth Justice Legal Centre Toolkit on Instructing an Expert](https://www.sentencingcouncil.org.uk/wp-content/uploads/2017/06/3oGk13U).

67 Section 44, Children and Young Persons Act 1933 and Section 58, Sentencing Act 2020

68 Ahmed & Others [2023] EWCA Crim 281

69 R v Balogun [2018] EWCA Crim 2933; R v Kara Baldwin [2021] EWCA Crim 417

70 Emanuel et al (2021) [The Sentencing of Young Adults: A Distinct Group Requiring a Distinct Approach](https://www.sentencingcouncil.org.uk/wp-content/uploads/2021/06/3oGk13U) and Howard League (2019) [Sentencing principles for young adults](https://www.sentencingcouncil.org.uk/wp-content/uploads/2017/06/3oGk13U)

71 R(M) v the Chief Magistrate [2010] EWHC 433, available at <https://www.sentencingcouncil.org.uk/wp-content/uploads/2017/06/3oGk13U>

72 ZA v R [2023] EWCA Crim 596 paras 82-88

# The sentencing hearing

On the day of sentence, it will also be important to make sure the child or young adult is properly supported – this can be the most stressful part of the whole case. See the case of ZA on the correct approach to sentencing children and young people.<sup>72</sup>

Guidance on looked after children and care leavers states:

‘It is good practice for the child’s social worker to attend court with the child, particularly on the day of sentence. Where it is not possible for the child’s social worker to be in court, then the child must be accompanied by their foster carer or, if they are placed in a children’s home, by the home’s registered manager. This is to support the child and also to ensure that the child’s best interests are represented, for example by discussing the possibility of an appeal with the child’s lawyer,

and to ensure that custody is used only as a last resort and not because it appears that a child will not have sufficient support to be rehabilitated in the community.’<sup>73</sup>

‘When dealing with a child or young person who is looked after the court should also bear in mind the additional complex vulnerabilities that are likely to be present in their background.’<sup>74</sup>

‘Where the offender is a care leaver the court should enquire as to any effect a sentence may have on the offender’s ability to make use of support from the local authority. (Young adult care leavers are entitled to time limited support. Leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point). See also the Sentencing Children and Young People Guideline (paras 1.16 and 1.17).’<sup>75</sup> [See milestone ages on p 7.]

- 73 ‘Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review’, DfE, 2010, last updated 2021, at para 8.41, p 161 [bit.ly/3udUez7](https://bit.ly/3udUez7)
- 74 ‘Sentencing guideline: Sentencing children and young people’, Sentencing Council, 2017, para 1.16, [bit.ly/3hv309d](https://bit.ly/3hv309d)
- 75 Sentencing Council Guidelines – under the heading Age & Maturity

# Appendix – Key policy and guidance, glossary and further reading

## Key policy and guidance

‘The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers’<sup>76</sup> – sets out the overarching key principles to ensure that looked after children and care leavers are not unnecessarily criminalised, and encourages professionals to ask, ‘would this be good enough for my child?’

- ‘Where a child is looked after by the state, we have a responsibility to safeguard and promote their welfare and to act as good corporate parents so they can each reach their full potential. The United Nations Convention on the Rights of The Child includes preventing criminalisation of children and highlights the importance of this in protecting children. This is particularly true for children and young people with additional vulnerabilities such as looked-after children and care leavers. Ultimately the question we must ask is: “would this be good enough for my child?” (Para 1.2)
- ‘Every effort should be made to avoid unnecessary criminalisation of looked-after children and care leavers, **including through prevention activity**. This is in recognition of the fact that looked-after children’s experiences can contribute to behaviours that make them particularly vulnerable to involvement in the youth justice system, potentially affecting their future life prospects.’ (Para 2.2; emphasis in original.)
- ‘[I]f a looked-after child is charged with an offence, it is important that they are not disadvantaged because of their looked-after status, and local authorities should ensure that there are viable alternatives to a child being remanded to a secure establishment. The home authority must ensure that the young person is:
  - Legally represented by a solicitor with expertise in youth justice.
  - Supported whilst at the police station by an appropriate adult.
  - Not held at the police station for longer than is necessary because support and/or accommodation isn’t available.
  - Supported to understand what is happening to them.
  - In addition to their carers, it is good practice for the child’s social worker to attend court with them, particularly on the day of sentence, to ensure that the child’s best interests are represented, that custody is used only as a last resort, and to act as a good parent would if their child was in court.
  - If the child has an Independent Child Trafficking Advocate, they should be advised, and attend court to further support the child or young person.’ (Para 8.1.)
- See in particular: Chapter 2 Overarching key principles; Chapter 3 The voice of the child; Chapter 6 Responding to incidents; and Chapter 8 Support to reduce offending for those who enter the criminal justice system.
- Also see:
  - ‘All Wales Protocol: Reducing the criminalisation of care experienced children and young adults. Expectations for practice across agencies to reduce the unnecessary criminalisation of care experienced children (up to the age of 18) and young adults (up to the age of 25)’<sup>77</sup>
  - local protocols such as ‘Reducing criminalisation of looked-after children and care leavers: a protocol for London’<sup>78</sup>

76 ‘The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers’, DfE, Home Office and MoJ, 2018, [bit.ly/436TwtZ](https://bit.ly/436TwtZ)

77 MoJ, Home Office and Welsh Government, 2022, [bit.ly/43sYJfL](https://bit.ly/43sYJfL)

78 Mayor’s Office for Policing and Crime (MOPAC), 2021, [bit.ly/3WzA1kM](https://bit.ly/3WzA1kM)

## National Police Chief's Council, 'National Strategy for Policing of Children & Young People'<sup>79</sup>

- 'Children in care often have a negative view of police ... [and] are more likely to be vulnerable to becoming a victim of crime or being exploited and the boundaries within which they behave are often different to those in a 'traditional' family unit. They are likely to have experienced trauma which will affect their behaviour disproportionately.'
- 'Children in care also make up a significant proportion of the cohort of C&YP who go missing on a regular basis and we must recognise the potential risk of harm to the individual and put measures in place to mitigate this.'
- 'We need to make every effort to avoid the unnecessary criminalisation of children in care, making sure that the criminal justice system is not used for resolving issues that would ordinarily fit under the umbrella of parenting.'

## National Police Chief's Council, 'Best Practice Framework Child Centred Policing'<sup>80</sup>

CPS 'Child Gravity Matrix'<sup>81</sup> – care experience, mental health needs and neurodiversity as well as adverse childhood experiences are all mitigating vulnerability factors

## CPS 'Code for Crown Prosecutors'

- On age and maturity: 'The criminal justice system treats children and young people differently from adults ... Prosecutors should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties ... [T]he younger the suspect, the less likely it is that a prosecution is required.' (Para 4.14(d).) – also see paras 4.9 – 4.14 (a) – (g)<sup>82</sup>

## CPS 'Legal guidance: Children as suspects and defendants'<sup>83</sup>

- 'The primary focus ... is prevention, diversion, and a clear commitment to developing interventions to avoid unnecessary prosecutions and criminalisation of children.'
- Public Interest considerations:
  - 'The starting point in asking whether a prosecution is required in the public interest is the Code for Crown Prosecutors, in particular paragraphs 4.9 to 4.14 (a) to (g)'
  - '[T]he circumstances of the individual child ... may be highly relevant as part of the overall public interest assessment.'
  - 'It is essential in all cases involving children to ensure that all matters relevant to the public interest decision are clearly identified, considered, and balanced.'
  - 'The decision to prosecute must only be taken after a full review of the case and the background information, including information concerning the suspect provided by the Youth Justice Service, police, or local authority.'
  - 'Prosecutors may be assisted by reference to the definitive guideline for sentencing children and young people published by the Sentencing Council. The principles in this guideline are relevant not just at sentencing but throughout.'
- Children Looked After (CLA):
  - 'Children in the care of the local authority for more than 24 hours are often referred to as Children Looked After (CLA), defined by the provisions of the [Children Act 1989](#). They make up a disproportionate amount of those children who are prosecuted.'
  - 'The decision to prosecute children looked after for low level offences committed within a children's home is a major decision and should be taken under the supervision of a youth justice specialist with full consideration of the specific and unique circumstances of this group of children.'
  - 'They are vulnerable and at high risk of offending because they may be living in a completely different geographical area away from friends and family, with other children who have been remanded to local authority accommodation. They are often aged between 14-17, deemed to be the peak age range for offending, and may be susceptible to peer pressure to engage in group offending. They may display challenging behaviour and be living within a setting of others displaying challenging behaviour.'

79 National Police Chief's Council, 'National Strategy for Policing of Children & Young People', 2016

80 National Police Chief's Council, 'Best Practice Framework Child Centred Policing', 2021

81 Updated Child Gravity matrix (publication - forthcoming)

82 Code for Crown Prosecutors, Full Code Test, CPS, para 4.14(d)

83 Code for Crown Prosecutors, 'Legal guidance: Children as suspects and defendants' CPS, 2023, [bit.ly/3MDab19](https://bit.ly/3MDab19)

- 'Additionally, offences of violence or theft which might not have been reported to the police in a familial setting are more likely to be reported when the children are living away from home. Alternative disposals should be considered before prosecution, where appropriate. ... Prosecution, caution or conditional caution should only follow if only these outcomes meet the public interest.'
- It is expected that the police will provide the following to assist in the decision-making process:
  - Relevant background information from social services and other agencies within a 'child looked after assessment form (CLAA)'
  - A copy of the children's home behaviour management policy (see CPS Legal Guidance: Children as Suspects and Defendants: Behaviour Management Policies)
- Also see Behaviour Management Policies & Special Educational Needs and Disabilities (SEND)
- Diversion from the court process – out of court disposals
  - 'If the case is suitable to be diverted, it is always preferable that this happens before the case enters the court system. ... if the child subsequently wishes to make admissions an adjournment may need to be requested to allow relevant enquiries to be made.'

DfE 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review'<sup>84</sup> – sets out the duties owed to looked after children who come into contact with the justice system:

- 'If a looked after child is arrested, the responsible authority should ensure that the child has the support of an appropriate adult and a solicitor with the necessary knowledge and skills while at the police station.' (Para 8.8, p149.)
- 'When a looked after child is charged with an offence it is important s/he is not disadvantaged by a refusal of bail because of his/her looked after status. The court needs to have confidence that the child will be supported to keep to any conditions of bail and is living in a suitable placement offering him/her the right support to divert them from offending.' (Para 8.11.)
- 'It will be good practice that wherever possible, working with the child's solicitor and the responsible YOT the local authority should actively work towards securing bail for the child ... or a remand to local authority accommodation.' (Paras 8.22 and 8.32.)<sup>85</sup>
- In relation to looked after children and youth justice:<sup>86</sup>
  - 'The Crown Prosecution Service have produced guidance to inform decisions about the prosecution of looked after children in recognition of the fact that it may not always be proportionate or in the public interest to bring charges where an offence has been committed by a looked after child.' (Para 8.9.)
  - 'If a custodial sentence is likely, the YOT worker and the child's social worker should work together to prepare the child and his/her family by explaining what will happen and how the child will be supported during and after his/her time in custody. (Para 8.40.)
  - 'It is good practice for the child's social worker to attend court with the child, particularly on the day of sentence. Where it is not possible for the child's social worker to be in court, then the child must be accompanied by their foster carer or, if they are placed in a children's home, by the home's registered manager. This is to support the child and also to ensure that the child's best interests are represented, for example by discussing the possibility of an appeal with the child's lawyer, and to ensure that custody is used only as a last resort and not because it appears that a child will not have sufficient support to be rehabilitated in the community.' (Para 8.41.)

84 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review', DfE, 2010, last updated 2021, [bit.ly/3udUez7](https://bit.ly/3udUez7)

85 See also 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review', DfE, 2010, last updated 2021, [bit.ly/3udUez7](https://bit.ly/3udUez7)

86 'Statutory guidance: Children Act 1989 Guidance and regulations. Volume 2: Care planning, placement and case review', DfE, 2010, last updated 2021, [bit.ly/3udUez7](https://bit.ly/3udUez7)

## ‘Sentencing guideline: Sentencing children and young people’<sup>87</sup>

‘Evidence shows that looked after children and young people are over-represented in the criminal justice system. When dealing with a child or young person who is looked after the court should also bear in mind the additional complex vulnerabilities that are likely to be present in their background. For example, looked after children and young people may have no or little contact with their family and/or friends, they may have special educational needs and/or emotional and behavioural problems, they may be heavily exposed to peers who have committed crime and they are likely to have accessed the care system as a result of abuse, neglect or parental absence due to bereavement, imprisonment or desertion. The court should also bear in mind that the level of parental-type support that a looked after child or young person receives throughout the criminal justice process may vary, and may be limited. For example, while parents are required to attend court hearings, this is not the case for social workers responsible for looked after children and young people. In some instances a looked after child or young person (including those placed in foster homes and independent accommodation, as well as in care homes) may be before the court for a low level offence that the police would not have been involved in, if it had occurred in an ordinary family setting.’ (Para 1.16.)

- ‘For looked after children and young people who have committed an offence that crosses the custody threshold **sentencers will need to consider any impact a custodial sentence may have on their leaving care rights and whether this impact is proportionate to the seriousness of the offence.** For other young people who are in the process of leaving care or have recently left care then **sentencers should bear in mind any effect this often difficult transition may have had on the young person’s behaviour.**’ (Para 1.17; emphasis added.)
- ‘There is also evidence to suggest that black and minority ethnic children and young people are over-represented in the youth justice system. The factors contributing to this are complex. One factor is that a significant proportion of looked after children and young people are from a black and minority ethnic background. A further factor may be the experience of such children and young people in terms of discrimination and negative experiences of authority. When having regard to the welfare of the child or young person to be sentenced, the particular factors which arise in the case of black and minority ethnic children and young people need to be taken into account.’ (Para 1.18.)

‘Care Experience Matters: A guide to how prisons, probation and local authorities can work together to support people with care experience in custody and on probation.’<sup>88</sup>

87 ‘Sentencing guideline: Sentencing children and young people’, Sentencing Council, 2017, [bit.ly/3hv309d](https://bit.ly/3hv309d)

88 ‘Care Experience Matters’, HM Prison & Probation Service (HMPPS), 2023 <https://bit.ly/3Phtlou>

# Glossary

Every care experienced child and young adult is different, but they all have one thing in common: a label. The language of ‘care’ can be alienating and stigmatising. This short glossary of some of the most common terms provides both a formal legal definition but also a definition developed by care experienced children and young adults which

should be borne in mind by practitioners when they use and refer to these terms. The additional definitions have been included to help practitioners understand how legal terms they may use in their work may feel to young people, so they can acknowledge this in conversations with their clients.

Term	Legal/formal definition	Young person’s definitions
Care experienced	Anyone who has been, or is currently, in care for any period of time.	A vulnerable young person taken out of their family and put into a system they don’t understand. You have to follow the rules of the system which don’t apply to children at home. Your life is under a magnifying glass. It’s an experience – but not a very nice one – it can be frightening so most people don’t want to talk about it.
Care system / child in care	The legal system that requires local authorities to step in to provide ‘care’ for children (under 18 year olds) and young adults (18–25 year olds) that they would otherwise have received from parents or family – can range from some support at home to being placed in alternative accommodation and provided with support	A system that is supposed to have a duty of care to you.
Care leaver	A person who has been ‘looked after’ or on a full care order for at least 13 weeks after they turned 14 and including one day on or after their 16th birthday	When the system is preparing to finish their responsibility of care for you. It starts when you are 16.
Care plan	A plan for all children in care who are provided with accommodation (ie looked after or on a full care order)	Never really written by the young person – always written by professionals about you. Often wrong and can be hurtful.
Child / children	Under 18 year olds As defined by Article 1 of the United Nations Convention on the Rights of the Child (UNCRC) and s105 Children Act 1989	
Child in care	Where a child is a “looked after” child or on a care order imposed by the court under the Children Act 1989	A vulnerable young person who requires social support and the local authority has a duty of care to their well-being.
Looked after child (LAC)	A ‘child in need’ who requires accommodation (s20 Children Act 1989)	The local authority has to find somewhere for you to live but being a LAC says it all – often you feel a “lack” of being cared for.
Young adult	18–25 year olds Although it is acknowledged that young adults are still maturing well into their mid/late-20s	

## Further reading

- ‘Needle’ by Patrice Lawrence, published by Barrington Stoke, 2022 – a novel about Charlene, a young Black girl in the care system and her experiences with the criminal justice system
- ‘My name is Why’ by Lemn Sissay, published by Canongate Books, 2020 – memoir uncovering the institutional, discriminatory and harsh nature of the care system
- ‘Lives in care’, BBC Radio 4, 21 June 2022, [bit.ly/3qgPfPS](https://www.bbc.com/radio4/lives-in-care)
- ‘Supporting children from custody into the community: a step by step guide’, Howard League for Penal Reform, 2019, [bit.ly/3qf4fxx](https://www.howardleague.org/step-by-step-guide)
- ‘Children and sentencing: a guide for adults supporting children facing sentence in the criminal courts in England and Wales’, Howard League for Penal Reform, 2018, [bit.ly/3BYDKz1](https://www.howardleague.org/children-and-sentencing)
- ‘A difficult balance: challenges and possibilities for local protocols to reduce unnecessary criminalisation of children in care and care leavers’, Hunter et al, 2023, [bit.ly/436LTx7](https://www.hunteret.com/a-difficult-balance)
- ‘Disrupting the routes between care and custody for girls and women’, C Fitzpatrick, K Hunter, J Shaw and J Staines, published by Lancaster University, Liverpool John Moores University, University of Bristol and the Nuffield Foundation, 2022, [bit.ly/3qdQRK7](https://www.nuffieldfoundation.org/disrupting-the-routes-between-care-and-custody-for-girls-and-women)
- ‘Experiences and pathways of children in care in the youth justice system’, Dr AM Day, HM Inspectorate of Probation, Academic Insights 2021/11, 2021, [bit.ly/3N8BThD](https://www.academicinsights.org/experiences-and-pathways-of-children-in-care-in-the-youth-justice-system)
- ‘Looked after children and custody: a brief review of the relationship between care status and child incarceration and the implications for service provision’, T Bateman, AM Day and J Pitts, published by University of Bedfordshire and Nuffield Foundation, 2018, [bit.ly/3MASOrt](https://www.nuffieldfoundation.org/looked-after-children-and-custody)
- ‘Your guide to the care system’, T2A Transition to Adulthood – Better Justice for Young Adults, 2022, [bit.ly/3MD7Tc1](https://www.t2a.org.uk/your-guide-to-the-care-system)
- ‘Support for care leavers’, House of Commons, 2022, [bit.ly/3WysBhP](https://www.parliament.uk/business/committees/committees-a-z/commons-select/care-leavers/)

## YJLC legal guides

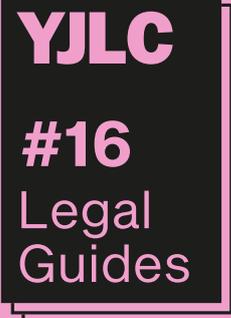
- ‘Child criminal exploitation legal guide’
- ‘Criminal Practice Directions legal guide’
- ‘Intermediaries for child defendants legal guide’
- ‘Trauma Informed Lawyering legal guide’
- ‘Instructing an expert legal guide’

All YJLC legal guides are available at [bit.ly/426ayAF](https://www.yjlc.org.uk/legal-guides/)

## #16 Dare to Care: Representing care experienced young people

This guide has been written by Kate Aubrey-Johnson and Dr Laura Janes in co-production with the Drive Forward Policy Forum and in collaboration with Katya Moran and Laura Cooper at the Youth Justice Legal Centre.

We are grateful for the contributions of the Drive Forward Policy Forum – Nadia Abdiwhab, Maleekah Burden, Joseph Decoteau, Kadiatu Diallo, Abdullah Mohammed, Jordan Morgan, Kara Packer and Shimron Walters. Thanks also to Nicholl Hardwick



#01  
Turning 18

#02  
Intermediaries for  
child defendants

#03  
Child Criminal  
Exploitation

#04  
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### Youth Justice Legal Centre

yjlc.uk

The Youth Justice Legal Centre (YJLC) provide legally accurate information, guidance and training on youth justice law. YJLC is a centre of excellence on youth justice law, providing:

- Guidance and expertise on youth justice law to safeguard children's rights in the youth justice system;
- A dedicated website with comprehensive information, legal resources and best practice guides for lawyers, judges, magistrates, youth offending teams, professionals, children and families;
- Training on youth justice issues for lawyers and non legal professionals working with children;
- Specialist legal advice for children and their families and legal support for professionals working with children in the criminal justice system.

### Drive Forward Foundation

driveforwardfoundation.org

Drive Forward Foundation empowers care-experienced individuals aged 16 – 26 in London to take control of their lives through sustainable and fulfilling employment, education, and training. Young people work with a dedicated Careers Specialist providing personalised 1-2-1 support, and have access to intensive employability skills training, bespoke work and training opportunities, as well as in-work mentoring support offered by partner organisations and employers.

### Garden Court Chambers

gardencourtchambers.co.uk

Garden Court Chambers is a number one ranked barristers' chambers committed to fighting injustice, defending human rights and upholding the rule of law.

### Child Rights & Youth Justice

childrightsyouthjustice.org

Child Rights & Youth Justice (CRYJ) works to ensure children's rights are fully understood and protected in the youth justice system, and that children are represented by child specialist criminal lawyers.

### T2A

t2a.org.uk  
barrowcadbury.org.uk

T2A is a broad coalition of organisations, which evidences and promotes the need for a distinct approach to young adults (18–25 year olds) throughout the criminal justice process. Building on the work of the 2005 Commission on Young Adults and the Criminal Justice System, the T2A Alliance was convened by the Barrow Cadbury Trust (charity number 1115476). T2A produces research and policy reports, and has worked with academics, professional bodies, policymakers and service users to make the case for change.