



# Corporate parenting literature review

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## Background

1. Under Schedule 4 of the *Children and Young People (Scotland) Act 2014*, the Scottish Legal Aid Board is listed as a 'corporate parent', which legally obliges the organisation to meet certain duties and responsibilities to looked after children and care leavers. SLAB's corporate parenting duties came into effect in April 2015, with the first corporate parenting plan being published in September 2016.<sup>1</sup>

2. SLAB has the following statement of intent with regards to looked after children and care leavers:

*"SLAB pledges to listen to the voice of Scotland's Care Experienced Young People. Act so that Scotland is a better place for Care Experienced Young People. Unite with and around Scotland's Care Experienced Young People.*

*We will do this by further developing our understanding of the lives and legal needs of Care Experienced Young People and using this to inform and shape our own service delivery and our policy advice to Ministers on legal aid."*

3. The Scottish Government uses the following definition of corporate parenting in its statutory guidance:<sup>2</sup>

*"An organisation's performance of actions necessary to uphold the rights and safeguard the wellbeing of a looked after children or care leaver, and through which physical, emotional, spiritual, social and educational development is promoted."*

4. Section 58 of the *Children and Young People (Scotland) Act 2014* obliges corporate parents to:<sup>3</sup>
  - a. Be alert to matters which, or which might, adversely affect the wellbeing of children and young people to whom this Part applies;
  - b. Assess the needs of those children and young people for services and support it provides;
  - c. Promote the interests of those children and young people;
  - d. Seek to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing;
  - e. Take such action as it considers appropriate to help those children and young people
    - i. To access opportunities it provides in pursuance of paragraph (d)
    - ii. To make use of services, and access support which it provides, and
  - f. Take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to those children and young people

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<sup>1</sup> Scottish Legal Aid Board, 30 September 2016, *SLAB publishes Corporate Parenting Plan*. Available at: [http://www.slab.org.uk/news/archive/articles/corporateparentingplan\\_1483153200023.html](http://www.slab.org.uk/news/archive/articles/corporateparentingplan_1483153200023.html) [last accessed 16 March 2017].

<sup>2</sup> *Children and Young People (Scotland) Act 2014*, Statutory Guidance on Part 9: Corporate Parenting. Available at: <http://www.gov.scot/Publications/2015/08/5260> [last accessed 16 March 2017].

<sup>3</sup> *Children and Young People (Scotland) Act 2014*, s 58.

5. The following, non-exhaustive list of outcomes is contained in the statutory guidance:<sup>4</sup>

- Providing safe, secure, stable and nurturing homes for looked after children and care leavers;
- Enabling looked after children and care leavers to develop or maintain positive relationships with their family, friends, professionals and other trusted adults;
- Upholding and promoting children's rights, for which SLAB has chosen the variant: 'to enable the upholding of the rights of looked after children and care leavers';
- Securing positive educational outcomes for looked after children and care leavers;
- Ensuring 'care' is an experience in which children are valued as individuals, and where support addresses their strengths as well as their needs;
- Ensuring physical or mental health concerns are identified early and addressed quickly;
- Increasing the number of care leavers in education, training and employment;
- Reducing the number of looked after children and care leavers who enter the youth and criminal justice systems.

6. As a new corporate parent, SLAB is initially focusing on developing our understanding of the lives and legal needs of care experienced young people and using this to inform our own service delivery and our policy advice to Ministers on legal aid. In the development of initial SLAB corporate parenting plans, research was considered which suggests that, as a group, looked after children and care leavers experience a number of disadvantages which are likely to bring them into contact with legal services.

*Research suggests that care leavers experience a lack of access to continuing education or training, unemployment, homelessness, poor mental health and physical wellbeing, teenage pregnancy and involvement in criminal activity.<sup>5</sup>*

7. In order to more fully understand the interaction of looked after children and care leavers with legally aided services, this initial review needs to be built upon to provide more comprehensive information to inform the continuing development of the Corporate Parenting plan.

8. This literature review will consider:

- The ways in which members of the eligible group are likely to interact with the broader justice system or to experience justiciable issues;

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<sup>4</sup> Children and Young People (Scotland) Act 2014, Statutory Guidance on Part 9: Corporate Parenting. Available at: <http://www.gov.scot/Publications/2015/08/5260> [last accessed 16 March 2017].

<sup>5</sup> Z. Duncalf, L. Hill & K. McGhee, 'Still Caring? Supporting Care Leavers in Scotland,' *Centre for Excellence for Looked After Children in Scotland*, March 2013.

- What advice the eligible group might need, and in what form;
  - What routes might lead them to need legal aid and access to justice;
  - The transition points and life events which may lead members of the eligible group to require legal aid;
  - The communication needs of the eligible group, and how SLAB fits in to their life course;
9. The Scottish Government announced in October 2016 that it was going to conduct a 'root and branch' review of Scotland's children in care system. The First Minister accepted Who Cares? Scotland's pledge to listen to 1,000 care experienced young people over the next two years, and use what they tell her to review the care system.<sup>6</sup>
  10. This report focuses on the Scottish care system where possible, but resources were sourced more broadly from areas including England and Wales, and to a lesser extent America and Australia, as well as international and regional reports and sources. It should be noted that, while some broader findings will be very relevant to the Scottish context, some will be less so, principally because there is a fundamentally different legal system in Scotland than the rest of the UK, with the Children's Hearings System playing a central role in Scotland.

## Methodology

11. This research was undertaken by sourcing desk-based resources and analysing their common themes as they relate to the aims above.
12. Resources were sourced primarily using publicly available searches and tools, such as identifying academic articles, journals, expert commentaries, government publications and statistics, and publications written by charities and NGOs. These were sourced initially through an online search using phrases including 'looked after children' and 'care leavers' plus 'Scotland,' 'legal assistance,' 'legal aid,' 'legal problems,' 'interaction with law,' 'access to legal assistance,' 'policies,' 'data,' and 'access to justice.'
13. Once early resources were identified bibliographies from these resources were considered as to whether any of their source material should be looked at for this review.
14. More detailed online searches were conducted once initial themes had been identified, using phrases including 'looked after children' and 'care leavers' plus 'welfare,' 'educational attainment,' 'residential homes,' 'communication,' 'social media,' 'solicitor's role,' 'homelessness,' 'outcomes,' 'mental health,' and 'criminal justice.'

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<sup>6</sup> BBC, 15 October 2016, *Emotional Nicola Sturgeon pledges children in care review*. Available at: <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-37661319> [last accessed 16 March 2017].

15. Relevant publicly available data sources were considered, such as Scottish Government statistics on looked after children and social work statistics.
16. In order for the information considered to be as relevant and up to date as possible, only resources which have been published since 2006 were considered. And, since research and information specific to Scotland is limited, resources were sourced more widely. The majority of these resources relate to England and Wales, with a small number being international or related to other countries including America and Australia.
17. Of those resources identified and found to be most relevant, 95 were related to young people's experiences of care, their legal needs, and how they might interact with the legal system. A further 26 were related to the communication needs of young people more generally, and those with care experiences or who need some type of assistance more specifically. For more details about the resources please see the bibliography appended to this report.

## Children in care

### Background and statistics

18. Looked after children in Scotland account for slightly more than 1% of Scotland's under-22-year-old population<sup>7</sup>; however the socio-economic profile of the care experienced community continues to be one of the most disadvantaged groups in the UK.
19. In July 2015, the most recent statistics, there were 15,404 looked after children in Scotland, a reduction from 15,580 in July 2014<sup>8</sup>. Of those 15,404, the age breakdown is provided in Scottish Government statistics:

**Table 1: Number of looked after children by age and gender. Scottish Government statistics as of 31 July 2015**

	Under 1	1-4	5-11	12-15	16-17	18-21	Total	% looked after children
Male	242	1,446	3,072	2,500	885	152	<b>8,297</b>	<b>53.9%</b>
Female	199	1,266	2,651	2,148	734	109	<b>7,109</b>	<b>46.1%</b>
<b>Total</b>	<b>441</b>	<b>2,712</b>	<b>5,723</b>	<b>4,648</b>	<b>1,619</b>	<b>261</b>	<b>15,404</b>	<b>100.0%</b>

<sup>7</sup> A. Priestley & L.A. Kennedy, 'The health of looked after children and young people: a summary of the literature', *University of Strathclyde International Public Policy Institute Centre for Health Policy*, July 2015.

<sup>8</sup> Scottish Government, *Looked after children key trends*. Available at: <http://www.gov.scot/Topics/Statistics/Browse/Children/TrendLookedAfter> [last accessed 16 March 2017].

Table 2: Children looked after at 31 July 2015 by ethnic group

Ethnic Group		% looked after children	% all children in Scotland
White	13,899	90.2%	94.5%
Mixed Ethnicity	271	1.8%	0.9%
Asian, Asian Scottish or Asian British	105	0.7%	3.3%
Black, Black Scottish or Black British	95	0.6%	0.9%
Other Ethnic Background	96	0.6%	0.4%
Not known	938	6.1%	0.0%
<b>Total looked after children</b>	<b>15,404</b>	<b>100.0%</b>	<b>100.0%</b>

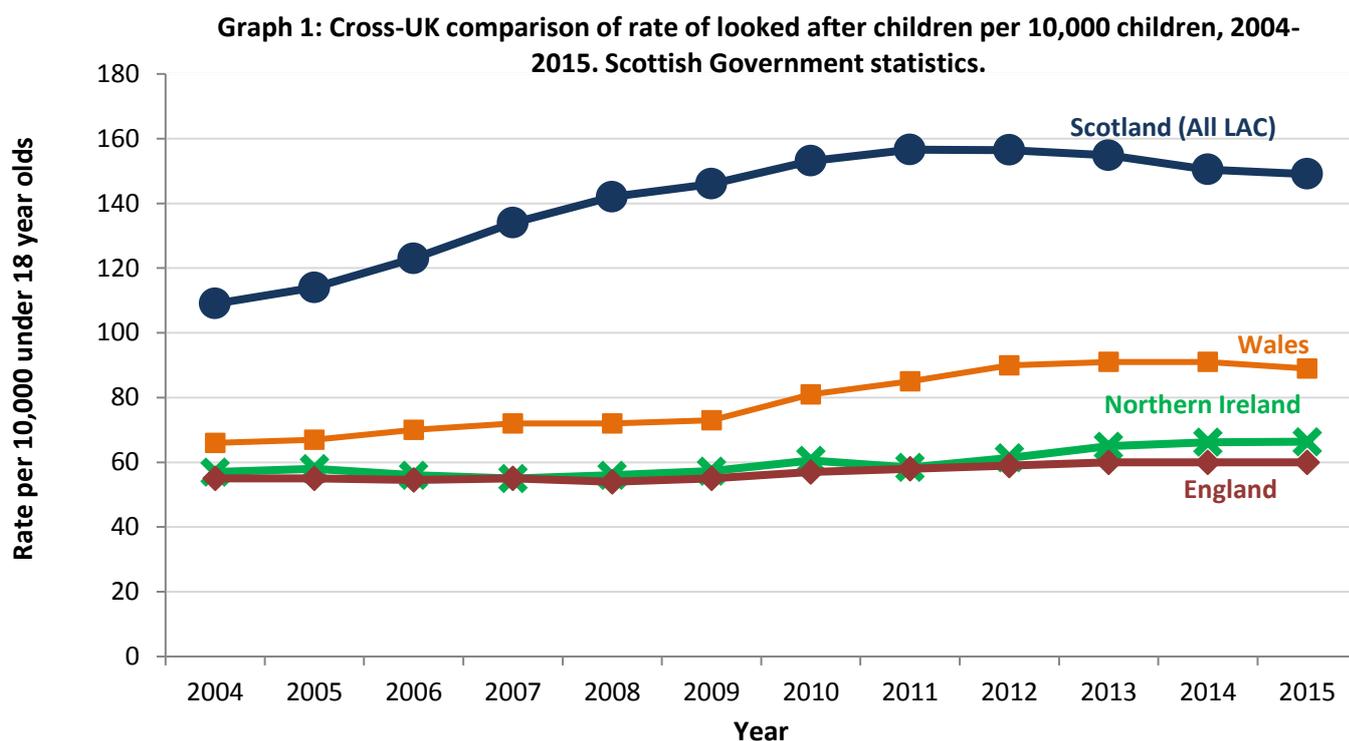
20. The vast majority (90.1%) lived in community settings, including being looked after at home, with foster carers, prospective adopters and other community placements. The remaining 9.9% were in residential settings, including residential homes and secure accommodation.<sup>9</sup>
21. Three of the 32 local authorities in Scotland were responsible for 37% of looked after children (Glasgow, Edinburgh and Fife).<sup>10</sup>
22. The rate of looked after children in Scotland per 10,000 children is significantly higher than the rate in all other parts of the UK:<sup>11</sup>

Part of the UK	Number of children per 10,000 who were looked after in 2015
Scotland	149
England	60
Northern Ireland	66
Wales	89

<sup>9</sup> Centre for excellence for looked after children in Scotland, *Latest statistics about children and young people in and leaving care*. Available at: <https://www.celcis.org/our-work/looked-after-children/facts-and-figures/> [last accessed 16 March 2017].

<sup>10</sup> Centre for excellence for looked after children in Scotland, *Latest statistics about children and young people in and leaving care*. Available at: <https://www.celcis.org/our-work/looked-after-children/facts-and-figures/> [last accessed 16 March 2017].

<sup>11</sup> Scottish Government, *Social Work Statistics Scotland 2014/15*. Available at: <http://www.gov.scot/Publications/2016/03/5133/downloads> [last accessed 16 March 2016].

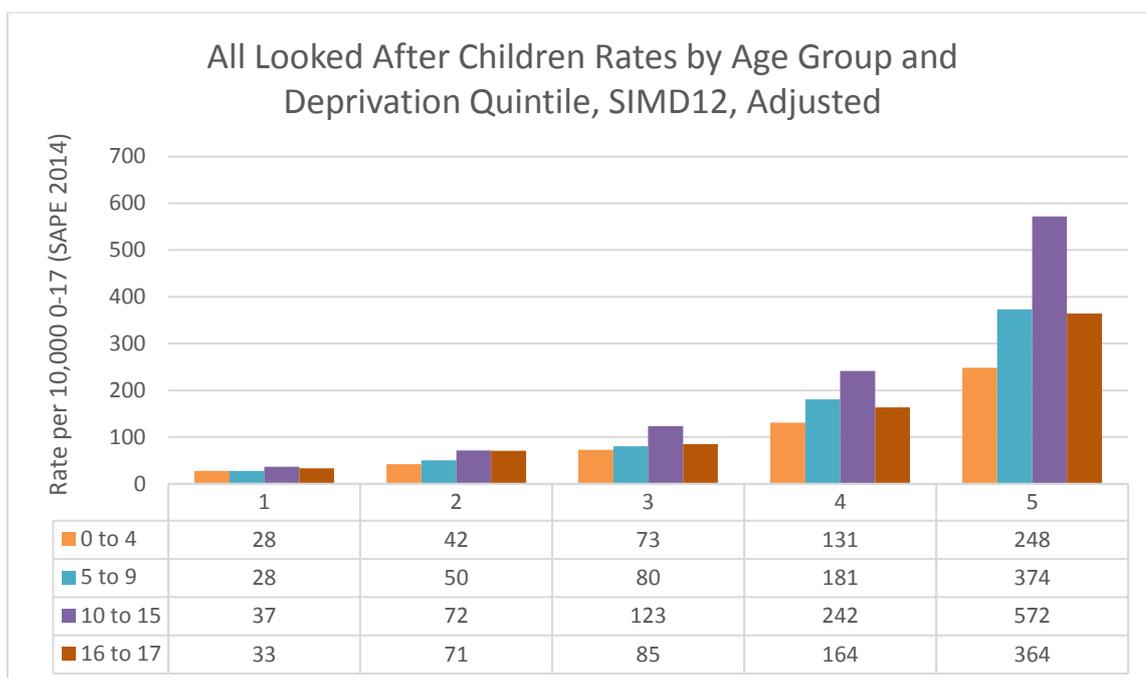


23. It is not clear why such a disparity exists. Research conducted through the Child Welfare Inequalities Project, which analysed data on over 35,000 children who were either looked after or on the child protection register in March 2015, could not confidently come to any conclusions about why this might be. They found that, when considering rates of children being looked after ‘away from home,’<sup>12</sup> children in Scotland appeared to have a 57% higher chance of being looked after than children in England. However, the data collected in the two countries are different, with children subject to Permanence Orders in Scotland included in the data, while children subject to Special Guardianship Orders in England (the closest equivalent) are not included in the data. There are also different approaches to adoption from care in England.
24. Regarding the backgrounds of children in care, the same research found that children from the most deprived neighbourhoods in Scotland were “around 20 times more likely to be subject to child welfare interventions in the form of child protection registration or becoming looked after, than those in the least deprived areas.”<sup>13</sup>

<sup>12</sup> Not placed with family, friends or relatives

<sup>13</sup> J. Hooper, M. Shapira & B. Daniel, ‘Identifying and Understanding Inequalities in Child Welfare Intervention Rates: Comparative studies in four UK countries. Single country quantitative study report: Scotland,’ *Child Welfare Inequalities Project*, February 2017.

Figure 1: Data from the Child Welfare Inequalities Project



25. The majority of looked after children in Scotland are under-11-years-old, which may reflect that child welfare practice focuses on intervention taking place earlier in a child’s life. Most looked after children are being looked after by the state due to abuse or neglect, with 98% of those in the care system having entered it due to issues outside their control<sup>14</sup>. The statistics suggest that many of those who are looked after will have limited engagement with the legal system due to their age, and the fact that they will likely lack the legal capacity to go to a lawyer. It is perhaps likely therefore that SLAB’s direct interaction with looked after children may be limited.

26. Care experienced young people experience multiple disadvantages which can, and often do, have a negative impact upon the rest of their lives. Looked after children have poorer educational outcomes than the general public; are more likely to have mental health difficulties; and are significantly more likely to come into contact with the youth criminal justice system.<sup>15</sup>

27. After leaving the care system, care leavers often have problems with independent living, resulting in debt problems, high numbers living in deprived areas, difficulties with fuel

<sup>14</sup> D. Coyne, ‘Care Leavers and the Criminal Justice System: a sorry state of affairs’, *Good Enough Caring*. Available at: <http://www.goodenoughcaring.com/the-journal/care-leavers-and-the-criminal-justice-system-a-sorry-state-of-affairs/> [last accessed 16 March 2017].

<sup>15</sup> See for example L. Bazalgette, 5 May 2015, ‘We must do more to support the mental health and wellbeing of care leavers’, *Community Care*. Available at: <http://www.communitycare.co.uk/2015/05/05/must-support-mental-health-wellbeing-care-leavers/> [last accessed 16 March 2017]; A. Priestley & L.A. Kennedy, ‘The health of looked after children and young people: a summary of the literature’, *University of Strathclyde International Public Policy Institute Centre for Health Policy*, July 2015; E. Cooper, ‘Exploring the personal constructs of looked after children and their foster carers: a qualitative study’, *University of Hertfordshire*, 2011.

poverty, and a high percentage being not in education, employment or training (NEET).<sup>16</sup> At the more extreme end, care leavers are disproportionately represented in the adult criminal justice system and are significantly more likely to be homeless than the general population.<sup>17</sup>

28. Many of the problems facing looked after children and care leavers are legal problems, or can become legal problems if early support is not provided. However, research shows that the support provided to care experienced young people is often insufficient to ensure that they do not reach a crisis point where legal intervention is used or necessary. As well as the likelihood of care experienced young people experiencing problems with a legal aspect, and early support often being unavailable, barriers exist which prevent people from accessing legal services.<sup>18</sup>
29. The Scottish Government's Index of Multiple Deprivation can be used to provide some context around the prevalence of looked after children in more deprived areas of the country. The Government produced a map of the 2016 Index which shows those areas which are least (dark blue) to most (dark red) deprived:

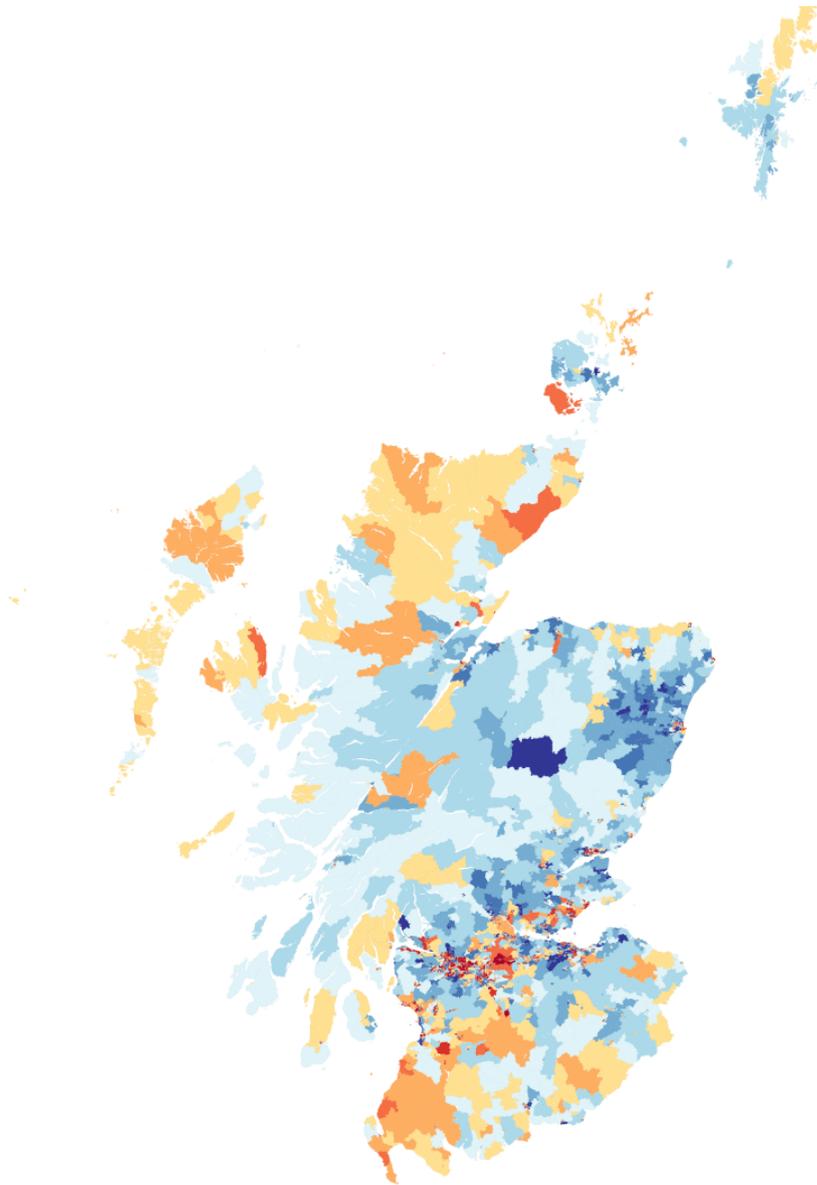
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<sup>16</sup> See for example The Department for Education, *Care leavers' transition to adulthood*, 17 July 2015; D. Graham, 'Anti-poverty strategies for care leavers: the same as prisoners?' *Centre for Crime and Justice Studies*; M. Liddiard, 'Exiting care; entering homelessness. The housing pathways of young care leavers in Australia', *Curtin University*, 2010; 'Beyond the rhetoric of youth homelessness: telling it as it is', *Barnardo's*, 2010; R. Fauth, D. Hart & L. Payne, 'Supporting care leavers' successful transition to independent living', *National Children's Bureau*, August 2012.

<sup>17</sup> C. Fitzpatrick, 'Achieving justice for children in care and care-leavers', *Lancaster University*, 2014; Department for Education, *Care leavers' transition to adulthood*, 17 July 2015; Scottish Government, *These are our bairns*, 2008; Barnardo's, *Homelessness*. Available at: [http://www.barnardos.org.uk/what\\_we\\_do/our\\_work/homelessness.htm](http://www.barnardos.org.uk/what_we_do/our_work/homelessness.htm) [last accessed: 16 March 2017]; 'Young, hidden and homeless', *Crisis*, April 2012.

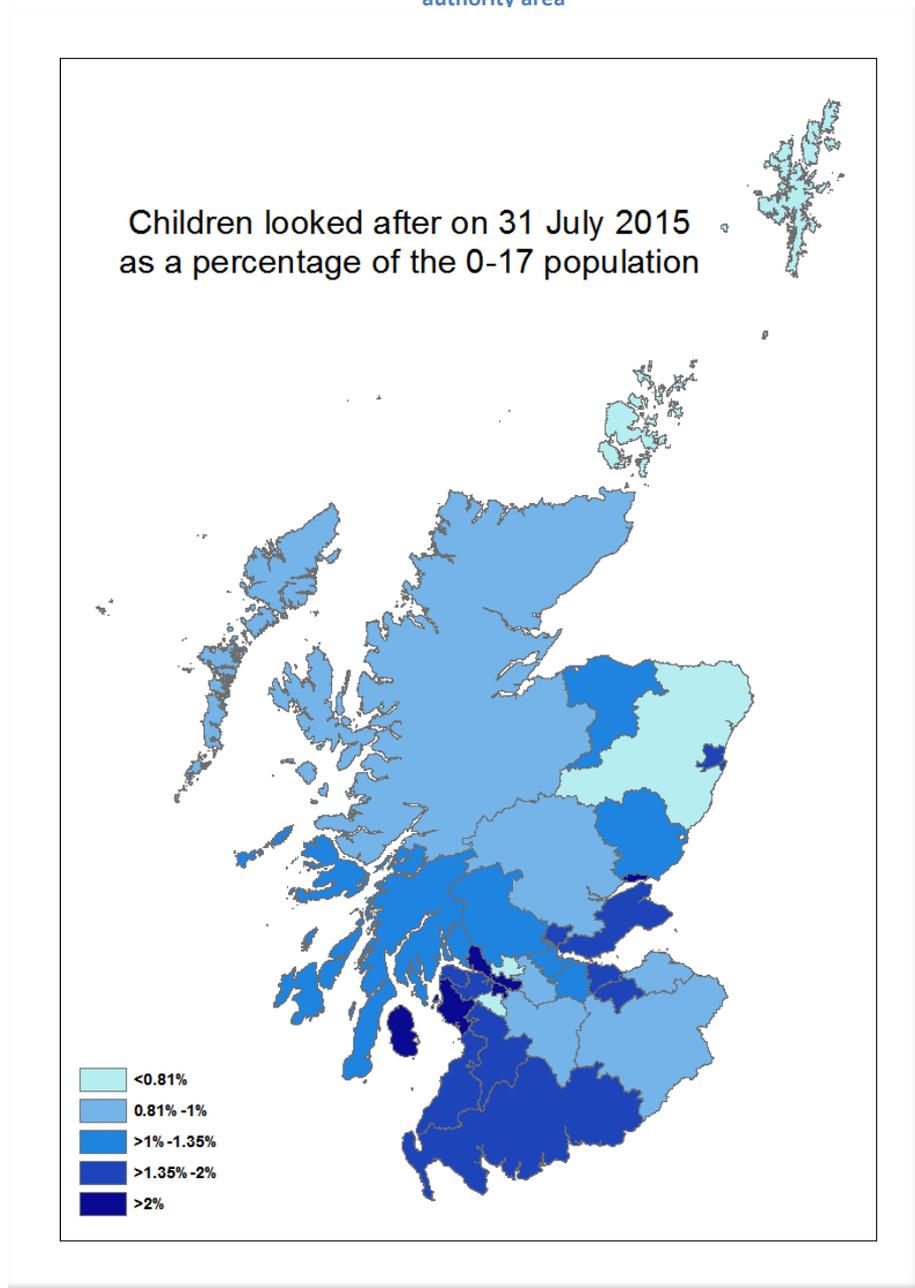
<sup>18</sup> See for example Human Rights Council, *Human Rights Council discusses right of the child to access to justice*, HRC 13 March 2014; UN Commissioner for Human Rights, *Access to justice for children, report of the UN High Commissioner for Human Rights*, 13 December 2013; Barnardo's, *Beyond the rhetoric of youth homelessness: telling it as it is*, 2010.; S. Aslam, 'Exploring looked-after children's experiences of child and adolescent mental health services', *University of Birmingham*, 2012.

Figure 2: Scottish Index of Multiple Deprivation 2016



30. This can be compared to the percentage of looked after children per each local authority area, as provided by Scottish Government statistics:

Figure 3: Looked after children as a percentage of the 0-17 age population by local authority area



31. There are some visible commonalities between the two maps, for example in the central belt, where there is a mix of least deprived deciles and most deprived areas, there are areas with the lowest percentage of looked after children right beside areas with the highest percentage of looked after children. As found in research conducted as part of the Child Welfare Inequalities Project, children from the most deprived areas of Scotland are much more likely to be subject to welfare intervention than those from the least deprived areas.<sup>19</sup>

<sup>19</sup> J. Hooper, M. Shapira & B. Daniel, 'Identifying and Understanding Inequalities in Child Welfare Intervention Rates: Comparative studies in four UK countries. Single country quantitative study report: Scotland,' *Child Welfare Inequalities Project*, February 2017.

## Provision for care leavers

32. In Scotland, young people can leave care at 16 but if it is in their best interests, are not required to leave before they are 18. Additionally, in April 2015 the Children and Young People (Scotland) Act 2014 Part 10 and 11 provisions came into force, enabling certain care leavers to qualify for 'continuing care' and 'aftercare'.<sup>20</sup>
33. New care leavers (those who leave care on or after 1 April 2015) who were born after 1 April 1999 and whose last placement was 'away from home' can either be in receipt of continuing care or opt for aftercare. Continuing care is a new duty on local authorities to provide care leavers with a continuation of the type of support they had when they were looked after, and aims to provide a more graduated transition out of care. It means the continued provision of the accommodation and other assistance that was being provided by the local authority immediately before the young person ceased to be looked after. The young person's right to this extends to the age of 21.
34. Aftercare is 'advice, guidance and assistance,' which includes helping a young person to secure accommodation, education and employment opportunities, and financial support. From April 2015, any young person who ceases to be looked after by a local authority on or after their 16<sup>th</sup> birthday is eligible for aftercare services, up to and including the age of 25.
35. If a young person aged 19 – 26 requests assistance from their local authority for aftercare support, the local authority must undertake an assessment and, if the care leaver's needs cannot be met by other means, the local authority must provide them with such 'advice, guidance and assistance as it considers necessary for the purposes of meeting those needs.' A local authority can provide aftercare to a care leaver after they reach 26, but there is no legal obligation to do this.

## Care experienced young people and legal issues

### Transition points

35. The two main transition points which result in care experienced young people experiencing issues which may require legal assistance appear to be:
  1. Where they first enter the care system, and subsequent placement moves;
  2. When they transition from 'looked after children' to 'care leavers'.
36. The time at which a child first enters the care system can result in significant upheaval of the child's life, particularly where they are going to be looked after for a long period of time or permanently. This stage of the process will often involve legal services, particularly when a child is going to be looked after 'away from home.' It may involve a Children's Hearing, which sometimes involves a solicitor, and for which legal aid is available. In terms of the legal aid system, A&A is available for advice about the system, ABWOR is available for the

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<sup>20</sup> The Children and Young People (Scotland) Act 2014, Part 10 and 11.

Children's Hearing itself, and full children's legal aid is available for any court proceedings relating to the Children's Hearing.<sup>21</sup>

37. Even where a child is looked after 'at home,' a Children's Hearing may happen, although there will be less upheaval of the child's life than there would be if they were to be looked after away from home. Where a decision is made that a child is to be looked after 'away from home,' this can involve moving schools, moving away from friends, and being separated from siblings. While these do not in and of themselves result in any legal issues, their longer term impacts can result in problems which may escalate to legal issues, as seen below.
38. Research shows that stability is very important in ensuring positive outcomes for a looked after child. This includes stability of school, stability of placement and stability of social worker and social work support, enabling young people to build up trust with adults, to build resilience and confidence. However, as shown above, many looked after children do not experience such stability. The Social Work Inspection Agency in Scotland found that looked after children need stability, and that being moved from one care setting to another results in negative outcomes.<sup>22</sup>
39. These placement moves can have a highly negative impact on looked after children, disrupting their stability, the development of trusting relationships with their carers and social workers, and having a negative impact on their educational outcomes. This is compounded by funding difficulties, which mean that social workers are supporting increasing numbers of people and have increasingly limited time for each person they support.<sup>23</sup> These transition points may not necessarily involve the young person coming into contact with legal services, but they can increase the likelihood of them coming into contact with the criminal justice system, and negatively impact upon their future outcomes.
40. While placement moves have a negative impact on looked after children, existing research suggests that the main transition point, with the resultant high risks involved, is when a young person leaves the care system.

#### *Moving out of the care system*

41. In the UK, 50% of young people are still living with their parents at the age of 22; looked after children have to leave care by their 18<sup>th</sup> birthday.<sup>24</sup> Care leavers, often who have had

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<sup>21</sup> There are statutory eligibility tests which must be met for legal assistance to be available through SLAB

<sup>22</sup> Social Work Inspection Agency, *Extraordinary lives: creating a positive future for looked after children and young people in Scotland*, 2006.

<sup>23</sup> See for example House of Commons Children, Schools and Families Committee, *Looked after children, third report of session 2008-09*; Scottish Alliance for Children's Rights, *State of children's rights in Scotland*, November 2014; C. Fitzpatrick, 'Achieving justice for children in care and care-leavers', *Lancaster University*, 2014.

<sup>24</sup> Department for Education, *Care leavers' transition to adulthood*, July 2015

difficult lives, therefore have to live independently much earlier than their peers, and without the 'safety blanket' of their family to go back to should something not work out. This can have severe impacts on care leavers, with the risk of entering the criminal justice system or becoming homeless being a real risk.

42. Care leavers who find themselves independent at 18 are often isolated and have very little support.<sup>25</sup> They are unaware of what rights they have as care leavers and what they can expect from their local authority. A report by CELCIS in 2012 reports on the difficulties care leavers frequently have during this time. Difficulties include financial problems, which can escalate to create a myriad of further problems, maintaining safe and secure living arrangements, and being unable to make mistakes due to having nowhere to go if things go wrong.
43. A report by the Children's Society, published in June 2016, demonstrates the extent to which some care leavers experience these problems.<sup>26</sup> The report focuses on England, so we cannot confidently say that the findings would be applicable to Scotland. The research found that, due to insufficient financial education from local authorities, many young people leaving care fall into debt and financial difficulties. In the two years before the report was published nearly 4,000 benefit sanctions had been applied to care leavers, leaving them with no money and no family to support them. Many care leavers reach a crisis point before seeking any advice on finances, suggesting that such situations could be avoided through better financial education and advice.<sup>27</sup>
44. Research has found that care leavers find the transition into independent living very difficult, and that many have never been taught about things such as budgeting, how to set up council tax, and how to pay bills.<sup>28</sup> This makes independent living very difficult, and without a stable family to rely on, many care leavers fall into debt problems and rent arrears. Community Care reported in 2015 that the rapid withdrawal of social support once a looked after child becomes a care leaver can have a big impact.<sup>29</sup> This report again focused on England and Wales. In Scotland the Children and Young People (Scotland) Act 2014 increased the age in which care leavers can access aftercare from 21 to 25, and introduced

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<sup>25</sup> L. Bazalgette, 5 May 2015, 'We must do more to support the mental health and wellbeing of care leavers', *Community Care*. Available at: <http://www.communitycare.co.uk/2015/05/05/must-support-mental-health-wellbeing-care-leavers/> [last accessed 16 March 2017].

<sup>26</sup> The Children's Society, *The cost of being care free: the impact of poor financial education and removal of support on care leavers*, June 2016.

<sup>27</sup> J. Evans, 'Care leavers and the new offender management system,' *British Journal of Community Justice*, vol. 11 (2-3), 2013.

<sup>28</sup> See for example, Centre for Excellent for Looked After Children in Scotland, '*Housing Options and Care Leavers: Improving Outcomes into Adulthood*,' July 2015; D. Graham, 'Anti-poverty strategies for care leavers: the same as prisoners?' *Centre for Crime and Justice Studies*.

<sup>29</sup> See for example L. Bazalgette, 5 May 2015, 'We must do more to support the mental health and wellbeing of care leavers', *Community Care*. Available at: <http://www.communitycare.co.uk/2015/05/05/must-support-mental-health-wellbeing-care-leavers/> [last accessed 16 March 2017]; Centre for Excellent for Looked After Children in Scotland, *Housing Options and Care Leavers: Improving Outcomes into Adulthood*, July 2015.

continuing care.<sup>30</sup> However, these provisions do not fully support care leavers, and not all care leavers choose to access them.

45. The National Children's Bureau found in 2012, that relative to their peers, young care leavers were more likely to be unemployed, live in unstable and poor quality housing, be young parents, have mental health problems, and have high levels of drug use.<sup>31</sup> All of these problems could result in legal issues, or in the young person requiring assistance from advice and support agencies.
46. The need to have a positive transition to supported or independent living was highlighted, with care leavers reporting that they would have liked the chance to make planned, staged transitions to new living arrangements.<sup>32</sup> The problems experienced during transition times can easily escalate to problems which may involve legal intervention, such as eviction or homelessness.<sup>33</sup>
47. There is a stark lack of support for some care leavers, with a Department of Education report in 2015 finding that only 8 of 151 local authorities in England and Wales reported that they knew where all of their care leavers were living and whether they were participating in employment, education or training.<sup>34</sup> We could not find statistics on whether local authorities in Scotland knew where their care leavers were or whether they were NEET. Research conducted by CELCIS, published in 2014, demonstrated that in Scotland local authorities were facing challenges in providing quality throughcare and aftercare services.<sup>35</sup>
48. Housing for young care leavers can sometimes be offered far away from their previous support networks and family connections, leaving many young people isolated and alone<sup>36</sup>. In Scotland it has been highlighted that this is particularly the case in rural areas, with Barnardo's reporting that young people from as far away as Stonehaven are being offered accommodation for homeless people in Fraserburgh or Peterhead.<sup>37</sup>
49. Care leavers can experience a rapid withdrawal of support services when care placements end, at the same time as they are first responsible for their own finances and

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<sup>30</sup> The Children and Young People (Scotland) Act 2014, parts 10 and 11.

<sup>31</sup> National Children's Bureau, *Supporting care leavers' successful transition to independent living*, August 2012.

<sup>32</sup> Centre for Excellence for Looked After Children, *submission from CELCIS to the inquiry 'having and keeping a home: steps to preventing homelessness among young people'*, February 2012.

<sup>33</sup> Barnardo's, *Beyond the rhetoric of youth homelessness: telling it as it is*, 2010.

<sup>34</sup> Department for Education, *Care leavers' transition to adulthood*, July 2015

<sup>35</sup> K. McGhee et al, 'Throughcare and aftercare services in Scotland's local authorities,' *Centre for Excellence for Looked after Children in Scotland*, March 2014.

<sup>36</sup> L. Bazalgette, 5 May 2015, 'We must do more to support the mental health and wellbeing of care leavers', *Community Care*. Available at: <http://www.communitycare.co.uk/2015/05/05/must-support-mental-health-wellbeing-care-leavers/> [last accessed 16 March 2017].

<sup>37</sup> Barnardo's Scotland, *Evidence from Barnardo's Scotland to the Equal Opportunities Committee on the steps required to prevent homelessness among young people*, 6 Feb 2012.

accommodation.<sup>38</sup> This combined with the fact that children in care are more likely to have mental and emotional health and behaviour problems can result in care leavers being simply unable to effectively handle the transition into independent living.

50. There are issues with the varying level of support provided depending on each local authority. In 2015 the Department of Education found that spending on care leavers varied widely between local authorities, but that there is no correlation between how much is spent and the quality of support. In 2013-14 local authorities in England and Wales spent an average of £6,250 for each care leaver, but this ranged from an estimated £300 to £20,000.<sup>39</sup> Audit Scotland reported that in 2008/09, an average of £150,000 per year was spent on each child in residential care, with weekly costs varying between £800 and £5,500 depending on the child's needs and their type of placement.
51. Barnardo's in Wales equally highlighted this time as a key transition point, and one which requires effective prevention and early intervention strategies to make sure that care leavers can have a stable and productive lifestyle, and that risks do not spiral to crisis point.<sup>40</sup> The National Children's Bureau emphasised this in 2012, reporting that during transition periods there needs to be assessment, ongoing support, opportunities for young people to participate in their transition planning, the gradual learning of skills, and continuity of workers and carers.<sup>41</sup>
52. The continuing care and after care steps recognise that more support is needed for care leavers transitioning out of the care system, and they are positive steps. Since the changes were only implemented in April 2015, it is unclear whether they have had a positive impact on the outcomes of care leavers. And while there has been recognition that more support is required during these key transition points, many care leavers are affected by negative outcomes that could bring them into contact with the justice system.

### Family and welfare legal issues

53. Looked after children and care leavers can face a myriad of problems which may result in legal problems regarding family and social welfare.

### *Children's Hearing System*

54. Becoming a looked after child can involve issues which require legal assistance, and in Scotland will involve the Children's Hearings System. This is a clear instance in which a young person or their parents / carers may come into contact with the legal aid system prior to the young person becoming looked after. Legal advice and assistance may be required prior to and at the hearing itself, at any Sheriff Court hearing when the case has been referred, or in

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<sup>38</sup> L. Bazalgette, 5 May 2015, 'We must do more to support the mental health and wellbeing of care leavers', *Community Care*. Available at: <http://www.communitycare.co.uk/2015/05/05/must-support-mental-health-wellbeing-care-leavers/> [last accessed 16 March 2017].

<sup>39</sup> Department for Education, *Care leavers' transition to adulthood*, July 2015

<sup>40</sup> Barnardo's, *Beyond the rhetoric of youth homelessness: telling it as it is*, 2010.

<sup>41</sup> National Children's Bureau, *Supporting care leavers' successful transition to independent living*, August 2012.

appeal cases.<sup>42</sup> If legal services are required, then the person may be entitled to legal aid. Certain individuals, the child's parents and other 'relevant persons' can apply for legal aid in the form of ABWOR to obtain assistance for a children's hearing. The applicant has to meet SLAB's eligibility tests in order to access legally aided services.

55. CELCIS carried out research in 2015 into the role of solicitors in the children's hearing system since the implementation of Part 19 of the Children's Hearings (Scotland) Act 2011 and the resulting availability of legal aid to both children and other relevant people.<sup>43</sup> The role of solicitors was felt to be constructive and valuable, with participants welcoming 'solicitor involvement in cases where they were representing children or young people.' However, most participants reported that solicitor involvement could present challenges, most often where a solicitor was representing a parent and other relevant people. During 2013/14 90% of legal aid work in Children's Hearings was conducted on behalf of parents and other relevant people, not on the behalf of children. This suggests that SLAB is most likely to be involved in these proceedings when a solicitor is representing someone other than a child. However, the CELSIS research found that, for the young people they spoke with, the presence of a solicitor helped to ensure the panel listened to them. This suggests that the role of a solicitor is important in children's hearings, and a clear example where children may require legally aided services.

#### *Sibling contact*

56. Existing research has identified times in which, while being looked after, a young person might experience family related problems. One such issue is that of sibling contact. CLAN Child Law found that sibling contact is often overlooked in the preparation of social background reports for children's hearing proceedings, which means that the hearing is then less likely to consider including a direction in relation to sibling contact in their decision.<sup>44</sup> Siblings are not automatically notified of their other siblings' hearings. This can then have an impact on where the siblings are placed, and the contact between them.<sup>45</sup>
57. A UN Concluding Observation highlighted that looked after children raised contact with siblings and parents as one of the most fundamental challenged they face, and the fact that sibling separation can be distressing and destructive.<sup>46</sup> A Prison Reform Trust report from 2011 found that if separation from siblings is not discussed and dealt with, the ability of a

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<sup>42</sup> Children's Hearings Scotland, *Information for parents and carers*. Available at: <http://www.chscotland.gov.uk/the-childrens-hearings-system/information-for-parents-and-carers/> [last accessed 16 March 2017].

<sup>43</sup> R. Porter, V. Welch & F. Mitchell, 'The Role of the Solicitor in the Children's Hearings System,' *Centre for excellence for looked after children in Scotland*, 2016.

<sup>44</sup> Clan Child Law, *Promoting Sibling Contact for Looked After Children*, November 2015.

<sup>45</sup> Clan Child Law, *Promoting Sibling Contact for Looked After Children*, November 2015.

<sup>46</sup> Committee on the Rights of the Child, *Concluding observations on the United Kingdom of Great Britain and Northern Ireland*, 3 October 2008. See also Scottish Alliance for Children's Rights, *State of children's rights in Scotland*, November 2014.

looked after child to settle can be affected, and that they might misbehave in order to disrupt their placement in the hope that they will be returned home.<sup>47</sup>

#### *Accessing records*

58. Once a young person has left care, there can be problems with accessing information about their family and personal history. Local authorities are reported as sometimes restricting the information made available to care leavers under the Data Protection Act 1998, meaning that some have received heavily redacted records which render their case histories effectively meaningless. Barnardo's has highlighted this problem, saying that: *"Every young person has the right to know who they are and where they come from, but children leaving care often lack a family network to answer basic questions they have. That is why it is essential that Government ensures children leaving care are able to access personal information about their history, their time in care and the decisions made on their behalf."*<sup>48</sup>.
59. The UK government has revised its guidance to ensure that care leavers have a fundamental right to access information held on their care records, but it is important that they, and local authorities, are aware of this right and how far it extends.<sup>49</sup>

#### *Debt and financial problems*

60. Care leavers are some of the most disadvantaged in the country, and frequently experience problems with benefits, debt, living conditions and other welfare issues.<sup>50</sup> These will be discussed more fully below, when considering transition points.

### **Homelessness and housing**

61. Research has consistently demonstrated that care experienced people are disproportionately affected by homelessness. Studies conducted in recent years have found that up to one third of homeless people have been children in care,<sup>51</sup> with lower statistics finding that 25% of those who were homeless had been in care at some point in their lives.<sup>52</sup>
62. A study by Barnardo's found that housing is one of the most critical components of leaving care services for achieving positive outcomes for care leavers. The report quoted statistics from the Who Cares? Trust which found that 30% of those who are homeless had been in

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<sup>47</sup> Prison Reform Trust, *Care – a stepping stone to custody? The views of children in care on the links between care, offending and custody*, 2011.

<sup>48</sup> Alison Worsley, then-Deputy Director of Strategy at Barnardo's, quoted in P. Garsden, 'Government promises to look at comprehensive access to family details for care leavers', *Abuse Law*, 23 December 2013. Available at: <http://abuselaw.co.uk/news/abuse-news/government-promises-to-look-at-comprehensive-access-to-family-details-for-care-leavers/> [last accessed 16 March 2017].

<sup>49</sup> R. Williams, 'Care leavers to get access to their records', *The Guardian*, 18 March 2014. Available at: <https://www.theguardian.com/society/2014/mar/18/care-leavers-access-records-new-rules> [last accessed 16 March 2017].

<sup>50</sup> The Department for Education, *Care leavers' transition to adulthood*, July 2015.

<sup>51</sup> The Centre for Social Justice, *Children in care should be given right to sue neglectful councils, say major new report*, September 2008.

<sup>52</sup> Department for Education, *Care leavers' transition to adulthood*, 17 July 2015.

care.<sup>53</sup> CELCIS found that in 2010/11, 2,332 homeless applicants aged under-25 in Scotland had a household member who had been formerly looked after by the local authority<sup>54</sup>. These statistics are likely to be an underrepresentation, since they only reflect those who actually apply for housing and omit those who may experience different forms of homelessness, including sofa surfing and sleeping in cars.

63. Homelessness has a huge impact on future outcomes, particularly those of young people. The homeless population in general is vulnerable, but youth homelessness involves considerably higher levels of vulnerability: 51% of young homeless people have been excluded from school, 40% have experienced abuse at home, and 33% self harm.<sup>55</sup>
64. Homelessness makes it difficult to obtain employment or education due to the lack of permanent address. A young person's chance of developing mental health difficulties is almost trebled if they are homeless.<sup>56</sup> It marginalises and isolates people from mainstream society. It is linked with drug and alcohol misuse, with a reported 30-40% of homeless young people being reliant on drugs or alcohol.<sup>57</sup>
65. Young homeless people face considerable barriers in accessing services and gaining the support they need. Homeless young women are vulnerable to sexual assault and sexual exploitation.<sup>58</sup> While this affects all young homeless people, the number of care experienced young people reflected in the statistics above is disproportionately high.
66. The high proportion of young homeless who have experienced care strongly suggests that the care system is not offering care leavers the support they need to successfully transition out of the care system. This will be considered more fully below.
67. Homelessness in Scotland can engage legally aid services, particularly in challenging local authority statutory homeless application decisions. Legal services are necessary to bring judicial review before the Court of Session, with legal aid being available to do this. Given the percentage of care experienced people who experience homelessness, it is likely that this is an area where they may come into contact with the legal aid system.

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<sup>53</sup> Barnardo's, *homelessness*. Available at: [http://www.barnardos.org.uk/what\\_we\\_do/our\\_work/homelessness.htm](http://www.barnardos.org.uk/what_we_do/our_work/homelessness.htm) [last accessed 16 March 2017].

<sup>54</sup> Centre for Excellence for Looked After Children in Scotland, *Submission from CELCIS to the inquiry 'having and keeping a home: steps to preventing homelessness among young people*, 7 February 2012.

<sup>55</sup> Coram Voice, *The door is closed: A report on children who are homeless because they are failed by the system which is supposed to protect them*, December 2014.

<sup>56</sup> Barnardo's, *Beyond the rhetoric of youth homelessness: telling it as it is*, 2010.

<sup>57</sup> Coram Voice, *The door is closed: A report on children who are homeless because they are failed by the system which is supposed to protect them*, December 2014.

<sup>58</sup> NSPCC, *Child sexual exploitation: who is affected*. Available at: <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-exploitation/who-is-affected/> [last accessed 16 March 2017].

## The criminal justice system

68. There exists a substantial research base regarding the impact of care on an individual's likelihood to have some interaction with, or entering, the criminal justice system.<sup>59</sup>
69. There are three principal aspects of the criminal justice system which impact on looked after children and care leavers:
1. Entering the criminal justice system
  2. A lack of support from the care system when in the criminal justice system
  3. The impact of being in the criminal justice system for future outcomes

### *Entering the criminal justice system*

70. Research has found that a high percentage of young people in the criminal justice system have backgrounds in care. The Prison Reform Trust launched a review in 2015 aiming to examine why recent statistics show that 61% of girls in custody have backgrounds in care, and a third of boys do.<sup>60</sup> The Centre for Crime and Justice Studies found that up to 44% of the youth justice population have been in care,<sup>61</sup> and a more recent 2016 study of 1,000 children in custody in England and Wales found that around half have experiences of the care system.<sup>62</sup> Research conducted in Scotland found that a third of young offenders had been in care at some point<sup>63</sup>. Other studies have found higher numbers, with up to 50% of Scottish prisoners being found to have been in care as a child<sup>64</sup>.
71. A number of reasons for this have been identified in previous research. Specific to young women, Juliet Lyon, the Director of Prison Reform Trust, said that *"reasons why so many young women behind bars have spent time in care are likely to include the high level of vulnerability, mental health need, emotional damage, neglect, and drug and alcohol addiction."*<sup>65</sup> Early criminalisation is something which has been highlighted by a number of experts, with looked after children becoming involved in the criminal justice system for incidents like breaking a window or individual incidents of bad behaviour.<sup>66</sup>
72. Research identifies a number of impacts of the care system which are risk factors in offending:

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<sup>59</sup> It should be noted that many of those in the care system have experienced trauma before entering the care system, and there is competing evidence about whether the care system itself creates risk factors for offending, or whether those risk factors are due to the young person's prior history.

<sup>60</sup> These statistics were found using a sample of 16 female and 942 male 10-to-17-year-olds. HM Inspectorate of Prisons Youth Justice Board, *Children and young people in custody 2012-13*, 2013.

<sup>61</sup> D. Graham, 'Anti-poverty strategies for care leavers: the same as prisoners?' *Centre for Crime and Justice Studies*.

<sup>62</sup> The Prison Reform Trust, *In care, out of trouble*, 2016.

<sup>63</sup> Scottish Prison Service, *Prisoner's Survey 2015 – Young People in Custody*, 2016.

<sup>64</sup> HM Inspector of Prisons for Scotland, *Annual Report: 2008-09*, 2009.

<sup>65</sup> V. Seabrook, 7 July 2015, 'Why are young care leavers being sucked into crime?' *The Guardian*. Available at: <https://www.theguardian.com/society/2015/jul/07/care-leavers-sucked-into-crime> [last accessed 16 March 2017].

<sup>66</sup> D. Graham, 'Anti-poverty strategies for care leavers: the same as prisoners?' *Centre for Crime and Justice Studies*.

Risk factor	Comment
The loss of or infrequent contact with family and friends.	The Prison Reform Trust found that some children reported that they were angry and upset and found it difficult to trust other adults. Some blamed their offending behaviour on the decision to take them into care, and others reported that their offending continued because they were taken away from family and friends. <sup>67</sup>
Placement stability.	The absence of stable, long-term placements increases the risk of negative outcomes due to the fact that children cannot form healthy and trusting relationships with adults. <sup>68</sup>
Poor relationships with carers and social workers, particularly in residential homes.	<p>Children’s relationships with carers and social workers are important, with poor relationships being related to carers’ inability to set boundaries or manage children’s behaviour effectively.<sup>69</sup></p> <p>The management of behaviour in residential homes varies and results in inconsistent outcomes, with relatively minor disruptive behaviour resulting in referral to the police.<sup>70</sup></p>
Peer pressure and interacting with older children in residential care.	<p>Certain placements bring young people into contact with other, often older, children who are already offending. Some children have reported that they were more likely to commit crimes in children’s homes than in other types of residence. A lack of money has been highlighted, with some children feeling that they had less money than some of their peers who weren’t looked after.<sup>71</sup></p> <p>The Youth Justice Board in 2015 identified that young people placed in residential care settings are more likely to enter the</p>

<sup>67</sup> The Prison Reform Trust, *Care – a stepping stone to custody? The views of children in care on the links between care, offending and custody*, 2011.

<sup>68</sup> The Youth Justice Board, *Keeping children in care out of trouble: an independent review chaired by Lord Laming: Response by the Youth Justice Board for England and Wales to the call for views and evidence*, August 2015.

<sup>69</sup> The Prison Reform Trust, *Care – a stepping stone to custody? The views of children in care on the links between care, offending and custody*, 2011.

<sup>70</sup> The Youth Justice Board, *Keeping children in care out of trouble: an independent review chaired by Lord Laming: Response by the Youth Justice Board for England and Wales to the call for views and evidence*, August 2015.

<sup>71</sup> The Prison Reform Trust, *Care – a stepping stone to custody? The views of children in care on the links between care, offending and custody*, 2011.

	criminal justice system, largely due to their more complex needs and historic instability. <sup>72</sup>
Certain backgrounds are risk factors for behavioural difficulties.	The Centre for Research on the Child and Family found that almost all children in care are from backgrounds of deprivation, poor parenting, abuse and neglect, which are all risk factors for emotional, social and behavioural difficulties, including anti-social and behavioural difficulties. <sup>73</sup>
An accumulation of risk factors are prevalent in care settings	These risk factors include: low socioeconomic status, family instability, and out of home placements; physical and sexual abuse, anti-social parents, aggressive behaviour before the age of 12, and delinquent peers; mental health issues including anxiety, attention problems, and motor restlessness; and coercive parenting or lack of child supervision. <sup>74</sup>

#### *Within the criminal justice system*

73. Once a care experienced young person is in the criminal justice system, again research has found that they tend to have more negative experiences than young people who are not care experienced. One reason for this is that care experienced young people are more likely to have substance misuse problems, emotional health, and mental health problems. A HMIP report in 2011 found that, despite these young people having such additional needs, half of those interviewed for the research said that they had not been visited by their social worker in custody or received financial support from the local authority<sup>75</sup>. Time in custody can disrupt existing relationships between the young person and their social worker, and it is reported that sometimes it is unclear whether social work or the criminal justice system has responsibility for aspects of the young person's care.<sup>76</sup>
74. There is reportedly a disconnect between social care and criminal justice. In social care, they young person is entitled to assistance until they are at least 21, and in some cases until they

<sup>72</sup> The Youth Justice Board, *Keeping children in care out of trouble: an independent review chaired by Lord Laming: Response by the Youth Justice Board for England and Wales to the call for views and evidence*, August 2015.

<sup>73</sup> G. Schofield et al, 'Looked after children and offending: reducing risk and promoting resilience,' *The Adolescent and Children's Trust & The Centre for Research on the Child and Family at the University of East Anglia*, 2012.

<sup>74</sup> G. Schofield et al, 'Looked after children and offending: reducing risk and promoting resilience,' *The Adolescent and Children's Trust & The Centre for Research on the Child and Family at the University of East Anglia*, 2012.

<sup>75</sup> C. Fitzpatrick, 'Achieving justice for children in care and care-leavers', *Lancaster University*, 2014, referencing the HMIP thematic inspection into looked after children in custody, 2011.

<sup>76</sup> The Youth Justice Board, *Keeping children in care out of trouble: an independent review chaired by Lord Laming: Response by the Youth Justice Board for England and Wales to the call for views and evidence*, August 2015.

are over 25 years old. However, at this age they will have moved into the adult criminal justice system. This reportedly causes confusion over who has responsibility for those young people, and can lead to the effective abandonment of young people.<sup>77</sup>

75. It has been reported that the costs of young people being in the criminal justice system are very high. The Prison Reform Trust found in 2016 that the annual cost to keep a young person in a secure children's home is over £200,000, and the yearly cost of a place in a young offender institution is around £60,000.<sup>78</sup>

#### *Leaving custody and future outcomes*

76. There are problems with care experienced people leaving custody. A Youth Justice Board report in 2015 reported that looked after children can be disadvantaged when it comes to decisions about early release, particularly where they do not have arrangements for accommodation.<sup>79</sup> Having stable accommodation when released from custody is crucial to the successful rehabilitation of young offenders, and this does not always occur where looked after children are concerned.
77. Research conducted by Claire Fitzpatrick at the University of Lancaster found that formerly looked after children are at an increased risk of re-entering the criminal justice system after release from prison, largely due to the lack of a family home to fall back on<sup>80</sup>. She also notes that there is a lack of clarity about who takes the lead for planning for release, a lack of access to support while in custody, and a lack of access to a placement or care, or leaving care services upon release from prison. A House of Commons Justice Committee report highlighted this issue: "*Some of the most disturbing evidence we heard concerned the effective abandonment of looked after children and care leavers in custody by children's and social services, with devastating implications for their outcomes on release.*"<sup>81</sup>
78. A large proportion of the adult prison population also report having a care background, with a reported 31% of women and 24% of men coming from care, although this could be an underestimate as many choose not to disclose their former looked-after status.<sup>82</sup> A Ministry of Justice report considering the family circumstances of 1,435 new sentenced prisoners in

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<sup>77</sup> D. Graham, 'Anti-poverty strategies for care leavers: the same as prisoners?' *Centre for Crime and Justice Studies*

<sup>78</sup> Prison Reform Trust, *In care, out of trouble*, 2016.

<sup>79</sup> The Youth Justice Board, *Keeping children in care out of trouble: an independent review chaired by Lord Laming: Response by the Youth Justice Board for England and Wales to the call for views and evidence*, August 2015.

<sup>80</sup> C. Fitzpatrick, 'Achieving justice for children in care and care-leavers', *Lancaster University*, 2014.

<sup>81</sup> House of Commons Justice Committee, *Youth Justice: Seventh Report of Session 2012-13. Volume 1: Report, together with formal minutes, oral and written evidence*, 2013.

<sup>82</sup> V. Seabrook, 7 July 2015, 'Why are young care leavers being sucked into crime?' *The Guardian*. Available at: <https://www.theguardian.com/society/2015/jul/07/care-leavers-sucked-into-crime> [last accessed 16 March 2017].

2005 and 2006 found that 24% reported being in care at some point during their childhood.<sup>83</sup>

79. Given the over-representation of care experienced young people and care leavers in the criminal justice system, it can confidently be assumed that a high number of those involved with the criminal legal aid system have backgrounds in care.
80. This could have implications for SLAB both regarding the Solicitor Contact Line and regarding criminal legal aid. All those who are currently interviewed by police will have some direct or indirect contact with the SCL, but the SCL does not currently collect data on the care status of individuals. This could be considered moving forward, both to understand those moving through the criminal justice system and the impact of care status on, for example, being able to find and retain a solicitor, or in re-offending rates.
81. If SLAB collected data on the care status of those accessing criminal legal assistance, this would also assist in being able to identify trends or patterns in how people who have experienced care are accessing criminal legal assistance.

### Education and employment

82. Statistics and research unequivocally show that care experienced individuals have significantly worse educational and employment outcomes than the general population.
83. Scottish Government statistics show that in 2014/15:<sup>84</sup>
  - Only 8% of looked after school leavers have one or more qualification at SCQF level 6 or better, compared to 60% of all school leavers;
  - 14% of looked after school leavers have no qualifications at SCQF level 3 or better, compared to 2% of all school leavers.
84. The low educational attainment of this group of young people has a direct impact on their interaction with the law and their future outcomes more generally. A House of Commons report published in 2015 found that educational attainment is the biggest predictor of whether young people are likely to become NEET.<sup>85</sup> The same report found that in 2013-14 in England and Wales, 41% of 19 year-old care leavers were NEET, compared with 15% of all 19 year-olds. Given that in the same time frame only 6% of care leavers were in higher education the proportion of care leavers who were NEET is not surprising.<sup>86</sup>

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<sup>83</sup> Ministry of Justice Research Series 4/12, *Prisoners' childhood and family backgrounds: results from the Survey Prisoner Crime Reduction longitudinal cohort study of prisoners, 2012.*

<sup>84</sup> Scottish Government, *Educational Outcomes for Looked After Children, 2014/15.* Available at: <http://www.gov.scot/Publications/2016/06/7455/downloads> [last accessed 16 March 2017].

<sup>85</sup> House of Commons Committee of Public Accounts, *Care leavers' transition to adulthood*, Fifth report of session 2015-16.

<sup>86</sup> Children's Commissioner, 03 August 2016, *Care leavers missing out on important routes to employment through apprenticeships.* Available at: <http://www.childrenscommissioner.gov.uk/news/care-leavers-missing-out-important-routes-employment-through-apprenticeships> [last accessed 16 March 2017].

85. There are problems with looked after children having their education disrupted due to changes and movement of placements, and unless a child is looked after in a stable long-term placement their education is likely not to take place at the same school. Frequent placement changes are fairly common. Statistics provided by Become (previously the Who Cares? Trust) show that more than one in ten looked after children had three or more placements in the twelve months to 31 March 2015,<sup>87</sup> and IRISS Insights notes research which found that there is a significant negative correlation between the numbers of placements a child has and learning difficulties.<sup>88</sup> A study by the National Foundation for Education Research found that 29% of children in care had 3 or more placements during secondary school, and 25% had 6 or more placements.<sup>89</sup> This disruption can have a huge impact on a young person's educational achievements, and therefore their future outcomes and how likely they are to face justiciable or legal issues.

86. This could result in care experienced young people experiencing problems which have a legal element (for example unemployment resulting in debt or eviction), and result in them seeking legally aided assistance.

### Mental health

87. There is a significant amount of research which demonstrates that looked after children and care leavers are more likely to suffer mental health illness than the general population. The statistics vary slightly, but research conducted in the last 15 years shows a high percentage of care experienced young people experiencing mental health problems:

- The first national survey for young people looked after by local authorities in England found that 45% of the looked after population could be diagnosed with at least one psychiatric diagnosis, a rate which increased to 72% for those in residential care. This compared to roughly 10% of the general population of young people:<sup>90</sup>
- Community Care, in 2015, reported that almost half of children in care have clinical-level mental health problems: four or five times more than children in the general population:<sup>91</sup>

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<sup>87</sup> Become, *about the care system*. Available at: <http://www.becomecharity.org.uk/care-the-facts/about-the-care-system/> [last accessed 16 March 2017].

<sup>88</sup> C. Baker, 31 May 2011, 'Permanence and stability for disabled looked after children', *IRISS Insights*. Available at: <https://www.iriss.org.uk/resources/insights/permanence-stability-disabled-looked-after-children> [last accessed 16 March 2017].

<sup>89</sup> Centre for Social Justice Children in Care Commission Report, *Breakthrough Britain: Couldn't Care Less*, quoting National Foundation for Educational Research statistics.

<sup>90</sup> E. Cooper, 'Exploring the personal constructs of looked after children and their foster carers: a qualitative study', *University of Hertfordshire*, 2011, quoting research carried out by the Office of National Statistics in 2003.

<sup>91</sup> L. Bazalgette, 5 May 2015, 'We must do more to support the mental health and wellbeing of care leavers', *Community Care*. Available at: <http://www.communitycare.co.uk/2015/05/05/must-support-mental-health-wellbeing-care-leavers/> [last accessed 16 March 2017].

- A 2008 study quoted by the University of Birmingham in 2012 found that 72% of looked after children displayed indicators of behavioural and emotional problems at the outset of their care journey.<sup>92</sup>

88. The mental health illnesses of looked after children can impact their placement security, likelihood to become involved in the criminal justice system, and their future outcomes more generally. It is crucial that those affected engage with mental health services, however there are barriers to accessing these services. Some barriers affect all children and young people, including a lack of information about mental health services, transport difficulties, inconvenient appointment times, long waiting times, and off-putting venues. However, regarding looked after children, CAMHS can lack the flexibility, sensitivity and accessibility required, and the stigma attached to being in care can be compounded by also attending mental health services.
89. Mental health is linked with justiciable issues within the general public, with those affected by mental health disproportionately represented within the criminal justice system, and having civil legal problems is identified as a risk factor for mental health.<sup>93</sup> In research published in 2015 a strong link was found between the experience of legal issues and mental health of young people.<sup>94</sup> The Commission on Women Offenders in 2012 estimated that of the total number of women in Scotland's prison population, 80% had mental health problems.<sup>95</sup>

### Barriers to accessing justice

90. There are significant barriers to accessing justice for care experienced young people. Generally the legal system presents barriers for children, not just those who are looked after. The UN High Commissioner for Human Rights in 2013 published a report on access to justice, and pointed to a number of barriers to access to justice for children.<sup>96</sup> These barriers are not specific to the Scottish system, but to legal systems more generally.
91. Firstly, the complexity of justice systems often makes them difficult for children to understand. Children can in the first instance be unaware of their rights, and of what they are entitled to; they may be unaware of the existence of services; and even if they do know of their rights they might lack information about where to go and who can help them.
92. Legislation and procedures are not often adapted to children's rights or needs, although this is likely to be less of an issue in Scotland due to the Children's Hearing System.

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<sup>92</sup> E. Cooper, 'Exploring the personal constructs of looked after children and their foster carers: a qualitative study', *University of Hertfordshire*, 2011, quoting research carried out by Sempik et al in 2008.

<sup>93</sup> See for example P. Pleasance, N. Balmer and A. Hagell, 'Health Inequality and Access to Justice: Young People, Mental Health and Legal Issues,' *Youth Access*, June 2015.

<sup>94</sup> See for example P. Pleasance, N. Balmer and A. Hagell, 'Health Inequality and Access to Justice: Young People, Mental Health and Legal Issues,' *Youth Access*, June 2015.

<sup>95</sup> Scottish Government, *Commission on Women Offenders 2012 Final Report*, 2012.

<sup>96</sup> UN High Commissioner for Human Rights, *Access to justice for children*, 13 December 2013.

93. The justice system can be intimidating for children and young people, with them being unsure how approaching legal services will affect them and their families. They might be afraid to make complaints due to fear of harassment, stigmatisation, abandonment or reprisals against them or their families, or they may think their complaints will not be taken seriously.
94. One of the major factors, and one which is likely to negatively impact upon looked after children, is that access to justice normally depends on the support being provided by adults. Firstly, adults themselves might not be aware of children's rights or how to support them, but equally children can be prevented from accessing justice due to a lack of capacity to act without their parents or legal representatives. During a legal process decisions can be made without explaining them or the consequences to the child.
95. Practical problems impede access as well, and these problems are likely to be exacerbated for looked after children. The physical distances to services and courts can be problematic, as can the cost of proceedings or legal services, with many children lacking the necessary means to pay for fees or organise travel. Looked after children are also likely to face stigmatisation and discrimination, which can prevent access to justice.<sup>97</sup>

## Communication needs

96. One of the key messages in existing research is that it is crucial for young people, including looked after children and care leavers, to be aware of their rights and to be able to access services to enable them to realise these rights. The Scottish Legal Aid Board can play a key role in ensuring that care experienced young people know how legal aid can be used to assist them should they experience any of the problems highlighted above.
97. The UN High Commissioner for Human Rights emphasised this in the 2013 access to justice for children report.<sup>98</sup> The report detailed ways in which young people can access information, including: information on websites and online counselling services; initiatives to raise awareness; the publication and dissemination of brochures, leaflets and posters in child-sensitive language and adapted to children's age in police stations, courts, and victim support services; and the establishment of help-lines for children.
98. Regarding issues care experienced young people are more likely to face, research suggests that information on rights and available services is not accessible to young people. In 2010 research carried out by Barnardo's into youth homelessness found that there was a lack of accessible information about the services available (although it should be noted that this is specific to Wales). As well as finding accessibility problems, Barnardo's found that staff needed to demonstrate sensitivity and respect when interviewing vulnerable young people, and that the stigma of homelessness can result in young people trying to hide their situation

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<sup>97</sup> S. Aslam, 'Exploring looked-after children's experiences of child and adolescent mental health services,' University of Birmingham Research Archive, September 2012; E. Cooper, 'Exploring the personal constructs of looked after children and their foster carers: a qualitative study', *University of Hertfordshire*, 2011.

<sup>98</sup> UN High Commissioner for Human Rights, *Access to justice for children*, 13 December 2013.

and feeling ostracised from society. The fact that young people are often in a crisis situation when they first approach services: *“I think they are more scared and unsure what is happening and maybe don’t know what help is available for them.”*<sup>99</sup>

99. The All Party Parliamentary Group<sup>100</sup> for looked after children and care leavers in 2013 found that only 29% of children in care and 17% of care leavers feel that they have all of the information they need about their rights and entitlements.<sup>101</sup> Looked after children were found to be particularly vulnerable because they do not always understand the information about their rights and entitlements. The APPG found that children and young people do not want the responsibility of finding information for themselves, and that they would rather be told by their social workers or personal advisors, and have something written down so that they can check what they have been told.

100. There are reportedly problems with services not being ‘child friendly.’ A Just Rights report in 2015 identified key things that young people would like services to do and be, including: just for young people; able to walk in off the street and ask anything; help with a range of issues, including debt, housing, employment, and benefits; provide, or refer to, specialist legal services if required; respect confidentiality; and be independent from the organisations they have problems with.<sup>102</sup> Many services do not have this level of flexibility, and are not well suited to providing support to young people.

101. International Bar Association research found that some of the practical barriers to access to justice for the population as a whole can *“severely and disproportionately”* affect children, and that the affects may be felt particularly acutely for disadvantaged groups of children.<sup>103</sup> The report highlighted that low levels of literacy and education have a particularly detrimental effect on rights awareness by children in alternative care, homeless children and children living in poverty.

102. It is evident that choosing the best and most effective way to reach young people and children is a challenge, particularly when considering looked after children and care leavers, a ‘hard to reach’ group. A report by Shelter in 2011 about engaging with homeless children speaks of the myriad of negative impacts on children due to homelessness or bad housing, and the importance of communicating with people experiencing crisis in order to make sure they know about available support. Shelter reports that those experiencing a crisis will not automatically seek external support, making outreach services very important.

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<sup>99</sup> Bernardo’s, *Beyond the rhetoric of youth homelessness: telling it as it is*, 2010.

<sup>100</sup> The APPG is an All Party Parliamentary Group which meets every two months, bring together young people who have experienced care, care professionals and voluntary organisations to discuss key issues. It is attended by members of the House of Commons and the House of Lords. More information available here: <http://www.becomecharity.org.uk/our-work/improving-the-care-system/appg/>.

<sup>101</sup>The APPG for Looked after Children and Care Leavers, *the entitlements inquiry: report with recommendations*, November 2013.

<sup>102</sup> Just Rights, *Make our rights a reality: a manifesto created by hundreds of young people across England*, 2015.

<sup>103</sup> Bingham Centre for the Rule of Law Report, *Children and access to justice: national practices, international challenges*, October 2016.

This outreach can include information being publicised in local authority advice centres and temporary accommodation providers, and working with partner organisations such as health services and social workers.<sup>104</sup>

103. In a report by the Council of Europe about trying to ensure young people are aware of their rights, it was reported that the Internet and social media resulted in the widest impact in terms of providing information to as many young people as possible.<sup>105</sup> Not using social media at all was reported as resulting in losing the most effective way to target young people, and not using it effectively has the result of failing to engage their attention. Other successful methods of communication were stated to be paper leaflets, publications or posters, as long as they are designed in a youth-appropriate way, youth information centres, and things like photo exhibits or holding debates with political party representatives. It should be noted however that this report considered young people aged 12 to 26, and did not focus on 'harder to reach' communities. The best means and methods of communicating with young people can change very quickly, particularly due to technological and social media advances and changes.

104. Some of the literature reviewed for this project notes problems with access routes to services for young people. A report published by Youth Access reported that advice agency access routes are rarely designed with young people specifically in mind.<sup>106</sup> The use of the internet and phone services to attract young people is reported as not being the way that young people get advice, with the cost of mobile phones being prohibitively expensive for some in this group. Youth Access emphasised the importance of providing advice and information for access in person rather than on-line or via the telephone.

105. The same report found that young people are often put off from getting advice by the initial intake systems, finding reception desks and waiting rooms full of adults intimidating. If they are turned away by a service the first time they contact them, a young person might not come back. It was reported that flexible intake systems are best for facilitating access and building trust, and that young people are likely to ask about quite trivial things initially, before turning to their more major problems. Flexible intake systems can include things like establishing youth-specific drop-in sessions, evening and weekend opening times.

106. One key aspect of communicating with children and young people, regardless of the methods used, is the importance of using language that they will be comfortable with. It is important to avoid jargon and technical language, to be aware that formal language used in a work setting might not be widely understood or appropriate and to explain any terms being used.

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<sup>104</sup> Shelter, *Good practice briefing: engaging with homeless children, guidance for children's centres*, April 2011.

<sup>105</sup> Council of Europe, *Young people's access to rights through youth information and counselling*.

<sup>106</sup> Youth Access, *Opening your doors to young people: guidelines for making advice services young-person friendly*, July 2010.

## Implications for SLAB

107. Much of the information above should be used to increase SLAB's understanding of how care experienced people interact with the broader justice system or experience justiciable issues. As such it may not have direct implications for SLAB's operations and the provision of legally aided services. However, the information above clearly shows that care experienced young people make up a disproportionately high percentage of those experiencing some problems which may involve a legal component. Many will come into contact with SLAB, through either civil or criminal issues or both.
108. We present here some initial thoughts for consideration by the relevant policy and operational areas.
109. It is likely that, at a direct service delivery stage, SLAB's Civil Legal Assistance Offices, Public Defender Solicitors' Offices, and Solicitor Contact Line will have engagement with care experienced individuals. This could range from brief contact, such as providing a referral service or linking an individual with a duty scheme solicitor, to providing legal case work services.
110. SLAB needs to better understand how we interact with both looked after children and care leavers in our direct service delivery. The organisation does not currently routinely collect information about the looked after status of individuals we interact with, although recent research with service users has asked about this in demographic questions.
111. The care status of an individual could be asked about or considered when they are applying for legal assistance, both in order to collect data and potentially in assessment.
112. Communication methods are something which should be considered further when considering how best to communicate with looked after children and care leavers. SLAB's proposed pilot to address potential difficulties faced by looked after children and care leavers in accessing information about legal aid will take into account the findings of this literature review. The pilot will look at the provision of information about legal aid at key transition points for looked after children and care leavers.



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