

Criminalising Looked-after Children

Bob Ashford and Rod Morgan illuminate the damage of Anti-Social Behaviour Orders against children in care by the *in loco parentis*, the local authority.

The issue

Young people in care where the local authority is *in loco parentis*, share, prior to their being taken into care, many of the risk factors exhibited by children prosecuted for offending behaviour (Youth Justice Board 2001). Indeed, some commentators suggest it is something of a lottery whether many children at risk are dealt with through Family Court or Youth Court proceedings. Yet, while in care, such children suffer from double jeopardy. If they are in residential care they are often exposed to even more of the risk factors associated with offending. Their educational links will likely be disrupted and their attachments to friends and the extended family undermined. They may feel alienated. They will probably be drawn into contact with a new peer group engaged in offending. But there is a further, exacerbating factor. The likelihood of their being criminalised for behaviour which, were they at home with parents or other carers, would almost certainly not result in the police being called and prosecution resulting, is likely to increase. To the extent that this occurs they are further disadvantaged and stigmatised.

Initiatives and targets

Quality Protects (in England) and *Children First* (in Wales), launched in 1999 (DfES 1999; Welsh Office 1999), had the aim of transforming the delivery and management of children's social services. Local authorities were set a range of KPIs, giving, for the first time, local councillors responsibility as corporate parents for young people in local authority care. The *National Service Framework for Children*, launched in 2001 (DH 2001), set new performance targets which strengthened these objectives. It determined that:

"By 2004, the proportion of children aged 10-17 and looked after continuously for at least a year, who have received a reprimand, final warning or conviction, should be reduced by one third from the September 2000 position. This sets a target to reduce the proportion from 10.8% to 7.2%."

The Youth Justice Board (YJB) has encouraged Youth Offending Teams (Yots), who uniquely bridge criminal justice and welfare agencies, to focus on looked-after children and demonstrate in their Youth Justice Plans how they will contribute to these targets. These efforts have resulted in some progress (figures produced by the DfES show 9.5% of looked-after children offending in the year ending 2003). But much remains to be done. The Magistrates' Association, for example, have complained to the YJB that looked-after children (LACs) continue, damagingly, to be prosecuted for minor assaults and acts of criminal damage committed in residential homes. Further, critics point out that the DfES target and counting rules exclude high risk LACs in care for less than 12 months.

Local good practice: Herts and Wilts

Two local authority partnerships, Hertfordshire and Wiltshire, led by their Yots, have spent considerable time examining the underlying reasons for and developing initiatives to address the problem. In Wiltshire figures for 2000 showed that LACs represented 0.3% of the total population of young persons but accounted for 6.9% of total recorded offences. Further, the average number of offences per LAC was 7.7 compared to an

ASBO Breach Resulting in Custody

Home Office data:

In the period June 2000 to December 2002, 478 ASBOs were taken out against young people. 170 of these ASBOs (36%) were breached by young people. Of those breaches, 71 (41%) resulted in a custody. Overall, approximately 15% of all ASBOs against young people ended in custody.

Youth Justice Board data:

Breaches resulting in custody: 2000-2002 Compared to 2004

In the entire period June 2000 to September 2002, 71 young people entered custody as a result of an ASBO breach. In the 18-week period between 3/05/04 and 22/08/04, 195 young people entered custody either on remand or as their sentence.

Institutions young people are reaching

The young people entering custody are spread out throughout the secure estate, with the majority in either young offender institutions or local authority secure children's homes. Average length of stay is approx. 43 days - this comprises shorter remand stays and longer stays on sentence.

Costs of rising custody

The figures above show a very significant increase both in the numbers of ASBOs taken out against young people and the numbers of young people entering custody as a result of ASBO breach. There is a financial cost to the rising number of young people reaching custody as a result of ASBO breach. The Board estimates the average cost of a custodial place for a year as £78,000; therefore providing places for the 195 young people reaching custody in the period 19 April to 16 August 2004 can be estimated at £2.25m. This equates to an annual cost of approximately £6.75m

Data from the Youth Justice Board submission to the House of Commons Home Affairs Select Committee inquiry into Anti-Social Behaviour.

average rate of 1.8 for all children in the county (Brewin 2004). GSI mapping of offences in the county highlighted a 'red' alert in a specific, largely rural area, where a residential home was sited. Work was carried out to create 'time lines' for each LAC to examine placement and offending histories, the nature and location of the offences, alongside interviews with the young people concerned. The analysis showed that:

- Offending commonly coincided with placement breakdown.
- A shortage of suitable accommodation, particularly for those young people remanded or bailed by the courts to the local authority, often resulted in emergency placements in residential homes leading to disruption and peer pressure to offend.
- A number of young people had no offending history prior to coming into care.
- Some offences in children's homes resulted in actions which would not have been reported in different circumstances.
- A significant minority of young people in children's homes committed a significant majority of offences.
- 85% of the LACs identified 'lack of a significant adult' as a feature of their lives in care.
- 35% of offences were committed at the young person's placement and 54% whilst young people were placed at one particular children's home.
- The police were unhappy with the number of call-outs they made to residential homes and magistrates with the high number of LAC appearing before them for relatively minor offences, and the lack of suitable placements to remand or bail young people to.

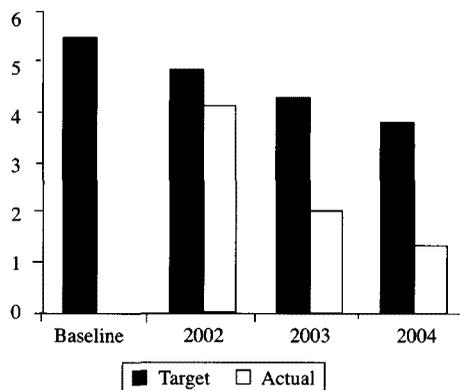
In order to address such issues Hertfordshire (Littlechild 2003) received a grant from the YJB and Wiltshire were successful in bidding for funds to stretch their PSA target to reduce offending by LACs. What were the particular features of their subsequently successful interventions?

- Both areas established strong local partnerships and working groups. In Wiltshire this involved Family Placement Management, the managers of children's homes, the police, the chairs of youth panels, the children's rights officer and the Yot managers supported by the Yot steering Group.
- Hertfordshire introduced a strong and extensive restorative justice (RJ) model. The local police, Thames Valley (recognised pioneers of RJ), brought their experience and training to the initiative. In both counties the Yot workers, police, residential home staff and others were fully trained in RJ techniques as a means of introducing a different behaviour management approach.
- Wiltshire introduced a mentoring scheme for all LACs who had offended in recognition of LACs' concern about the lack of significant adults in their lives.
- Wiltshire also introduced a remand fostering scheme designed to provide a specialist, structured and supported network, thereby offering an alternative to residential or mainstream foster care and avoiding emergency, disruptive, and unsuitable placements in residential or mainstream foster placements.
- Both areas examined and developed protocols for the reporting of incidents and offences which meet Home

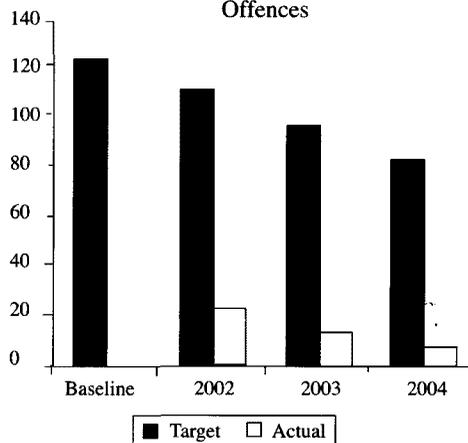
Office counting rules and the need to protect staff and young people.

As a result Wiltshire has significantly exceeded its target on reduction of offending by looked-after children.

Ratio LAC to Peers



Offences



In Hertfordshire, following the initial period of RJ implementation, there was a 39% reduction in police call-out figures compared to the eight months prior to implementation. This outcome coincides with those recorded by the University of Hertfordshire of other residential homes taking similar steps (a reduction of 54% in the number of recorded incidents).

In addition to the beneficial effects for young people both areas reported a positive impact on staff morale, strengthened relationships with the police and courts, more highly motivated residential staff and benefits from inter-agency training. Both areas also acknowledge, however, that while they have made important strides in working with local authority children's homes, private residential homes, of which there are many, represent a further challenge.

Continued on page 38

Conclusion

The needless criminalisation of looked-after children is unjust, socially damaging and exceedingly costly in its long-term consequences. Some progress has been made nationally and there are examples of notable good practice and significant progress locally. But averting this outcome needs greater, more concentrated effort. Together with the DfES, the YJB has commissioned NACRO to produce a handbook for local authorities covering many of the issues above, based on research and good practice. The Children's Bill and the proposed youth Green Paper, alongside the development of Children Trusts, should strengthen the concepts of corporate parenting, the value of prevention and early intervention, common assessment frameworks and information sharing.

Bob Asbford is Head of Prevention and **Rod Morgan** Chair, Youth Justice Board.

References

Brewin M. (2004) 'Wiltshire's successful strategy for tackling offending', *Quality Protects*, 16, February.

Dept for Education and Skills (1999) *Quality Protects*, London: DfES.

Dept of Health (2001) *National Service Framework for Children*, London: DH.

Littlechild B. (2003) *An evaluation of the establishment of a restorative justice approach in a residential unit for young people in Hertfordshire*, Buckingham: University of Hertfordshire.

Welsh Office (1999) *The Children First Programme in Wales: Transforming Children's Services*, Circular 20/99, Cardiff: Welsh Office.

Youth Justice Board (2001) *Risk and protective factors associated with youth crime and effective interventions to prevent it*, London: YJB.

Rights Act compliant, the sentence term could not be increased, even if the risk factors noted on the review have increased since sentence was pronounced.

For non-custodial sentences consider a community sentence of two years. Although provisions currently exist for early revocation following a satisfactory response to supervision, they are rarely used. The current experience is that Probation Officers, in preference to seeking the revocation of a community order which it has become unnecessary to police, prefer to pursue a 'light-touch' approach, such as the Supervision and Monitoring Scheme ('SAMS'), used in London and other hard-pressed Probation Areas. It consists of transferring those under active supervision, once the interventions specifically identified by the supervisor at the commencement of a CRO have been concluded, to a regime of casual reporting, often only by telephone. This is simply poor professional practice; the maintenance of the highest standards of supervision demand that when a supervisor concludes that the basis upon which a court order was imposed has altered, the supervisor should actively communicate that view to the sentencer.

The scheme outlined in this article would not require legislation. The principle of discretionary executive release is well established. Provided the sentencer became involved through the offender manager, in recommending the executive reduce the length of the custodial term, the subsequent licence term or its conditions, the reduction is in fact being achieved by the executive, albeit with the active support and *de facto* recommendation of the sentencer. For practical purposes the sentencer would perform a similar role to that currently undertaken by the Parole Board. If a sentence has been the subject of a successful appeal, where the appeal has been allowed by the Crown Court, that court should then review the sentence. Where a Crown Court sentence has been reduced or increased by the Court of Appeal Criminal Division, it should be for the Presiding Lord Justice of that court to determine by whom the sentence should thereafter be reviewed, recognising that it would be inappropriate for the original sentencer to do so. The benefits of sentence reviews are that they would tend, by creating a link between offender and sentencer, to lower re-offending; and would, by reducing the time spent in custody, see a fall in prison over-population.

Judge John Samuels QC is a Circuit Judge sitting at Blackfriars Crown Court, Chairman of the Criminal Sub-Committee of the Council of Circuit Judges, and a Trustee of CCJS.

This article is based on a paper presented to the Cambridge Senior Course in Criminology in July 2004, run by the Institute of Criminology. For more information, see the piece by Adam Mansky in this issue on court innovations in the US.

References

Bourn, J. (26 March 2004), *The Drug Treatment and Testing Order: Early Lessons*, HC 366 session 2003-2004, National Audit Office: London.

Halliday, J., French, C. and Goodwin, C. (2001), *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, London: Home Office.

McCormac, K., letter dated 5 July 2001, www.homeoffice.gov.uk/docs/punishconsult.pdf