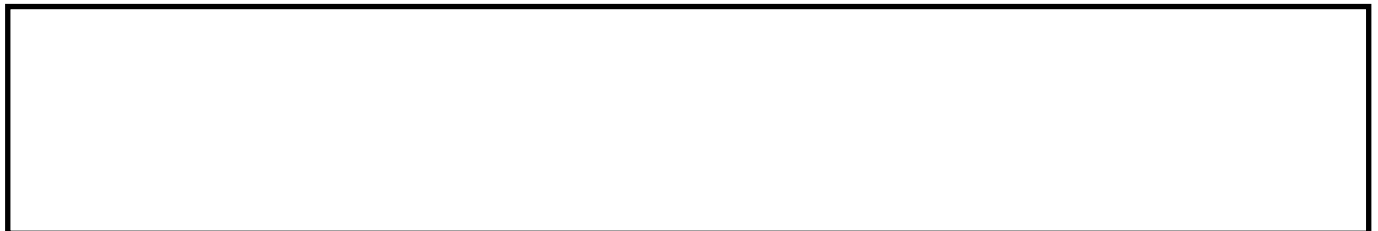


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# Looked after children.

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## **Chapter Twelve**

### **Looked After Children in Scotland**

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#### **Introduction**

This chapter will begin by considering what it means to be a ‘looked after’ child or young person. Legislative and policy developments will be outlined from the wide ranging impact of the Kilbrandon Report (1964) to the Children and Young People (Scotland) Act 2014. The development of services and policy for and practice with looked after children will be outlined and contextualised within current Scottish Government strategy. Outcomes for looked after children will be explored via an analysis of the impact of those policies and implications for current and future practice will be identified.

#### **Context**

Under the provisions of the Children (Scotland) Act 1995, ‘looked after children’ are defined as those in the care of their local authority who are either ‘looked after’ at home or away from home. Being ‘looked after’ at home means that a child or young person is subject to a supervision requirement by the Children’s Hearings system. Through this, they have regular contact with their local social work department but continue to live in their usual place of residence. A child or young person in Scotland may also be cared for away from home, if they are made subject to a supervision requirement with a condition of residence. This includes being provided with accommodation on a voluntary basis under section 25 of the Children (Scotland) Act 1995; being placed by a local authority which has made a permanence order under Section 80 of the Adoption and Children Act 2007; or being subject

to an order, authorisation or warrant made under the 1995 Act. This normally means being cared for in a residential care home, with kinship or foster carers, prospective adopters or in a residential school or secure unit. Children and young people in these circumstances would be described as being 'looked after and accommodated'.

### *Being Looked After*

Today, children usually become 'looked after' for reasons of care and protection. Some will have experienced neglect, mental, physical or emotional abuse or a combination of these. Only a minority become looked after as a result of involvement in the youth justice system, reflecting a shift in patterns of referral to the children's hearings system over time, away from offending and towards care and protection grounds. Individuals with complex disabilities might need to be looked after in specialist resources, while vulnerable and unaccompanied minors seeking asylum may become looked after in order to ensure their well-being, as might those who have been illegally trafficked into the UK.

At 31 July 2016, there were 15,317 looked after children in Scotland – a decrease of 83 (or less than 1%) from 2015. More than 50% of these are believed to have additional support needs such as emotional or behavioural problems, physical disabilities or learning difficulties. However, this statistic should be viewed within the context of the Education (Additional Support for Learning) (Scotland) Act 2009, (amended), which assumes that all looked after children and young people have additional support needs unless the education authority are able to demonstrate that an individual looked after child or young person does not require such support in order to benefit from school education. There is a decreasing trend in children

being looked after at home, with this group accounting for only 25% of the total in 2016 compared to 32% in 2012. This is the fourth consecutive year that numbers of children looked after at home have decreased following a peak of 16,248 in 2012.

In 2016, the majority of children looked after were between the ages of 5 and 15 years (accounting for 61% of the total number). 89.5% of children were white with numbers of children coming from black or minority ethnic backgrounds having increased sharply in Scotland, although still relatively low in number overall, partly due to increasing numbers of accompanied children and unaccompanied young people seeking asylum or awarded refugee status. There was a 47% / 53% split between girls and boys (respectively) (Scottish Government 2017a).

### *Being Accommodated*

Despite the general decrease in numbers of children and young people being looked after, there are increasing numbers of children looked after away from home in community settings; the largest increase this year being with friends or relatives in kinship care (28% of the total). Local authorities usually place children with kinship carers for similar reasons as they place them with foster carers. This includes parental substance misuse, domestic violence, bereavement and illness. Where the local authority is not involved there is less known about the reasons children enter kinship care. During the same period, 36% of the total of looked after children were cared for by foster carers. Only 9% of that total was living in residential accommodation (children's homes and residential schools), with an average of 85

residents in secure accommodation throughout 2015-16, an increase of 4% and a reverse of the more recent downward trend (Scottish Government 2017a).

Residential child care is used for diverse purposes. For some, it is a short stay solution to a family crisis while, for others, it provides a 'home and place of stability' (Milligan, Hunter and Kendrick, 2006: 26). Sometimes it is used as a placement allowing sibling groups to be kept together. Residential child care is increasingly seen as a last resort with foster or kinship care still being the preferred options for the provision of family-like care. Many young people admitted to group care settings have already experienced the breakdown of multiple family-like environments. Secure accommodation provides intensive support and safe boundaries through the restriction of liberty in a controlled setting for this small number of children under the age of 18 years, as decided by the Children's Hearings system or the Courts, in cases where specific legal criteria are met (see Secure Accommodation (Scotland) Regulations 2013).

### *Residential Child Care Practice*

Residential care work shares some characteristics with other types of social work but is also unique in that staff both witness and become part of the lives of those they work with on a day-to-day basis, what is called a life space orientation (see, Bolger and Miller, 2012; Keenan 2015). Residential child care practice is increasingly professional, often therapeutic, can be specialised and with high levels of individualisation. Ambivalence concerning its use might be attributed to historical evidence around the potentially damaging impact of life in an institution; specific concerns around standards of professional practice; and the positive ideology of inclusion.

## **Understanding the Past**

As discussed in the previous chapter, concern about the experiences of children in care can be traced back to the post World War 2 period. The Curtis Report (1946) and the parallel Clyde Report (1946) into Scottish services identified the need for children to be given greater individual attention; the introduction of smaller group living arrangements within larger institutions and a preference for smaller children's homes, initially called family group homes; the provision of facilities for free play and the introduction of after-care. It also recommended that children should be cared for by their families wherever possible. If that was not possible, then they should be boarded out (fostered) in the first instance or cared for in residential establishments run by the local authority or voluntary organisations in conditions that were to offer what was described as 'parental affection'. The Clyde Report also highlighted the need for appropriate training, support and remuneration for foster carers and residential child care workers and that standards/regulations and monitoring for both types of placements required greater attention (see *The Therapeutic Care Journal*, 2011).

Again, as discussed in Chapter Ten, The Kilbrandon Report (1964) recognised the need for a spectrum of child care provision to be made available and brought together in a single comprehensive system. It was recognised that the children who offended or who were in need of care and protection had all experienced a failure in the normal experience of upbringing. The Social Work (Scotland) Act 1968, drawing on Kilbrandon's recommendations, provided the primary mandate for social work intervention and consolidated certain enactments around the care and protection of children. This involved the creation of the Children's Hearings System to ensure the safety and wellbeing of vulnerable children. The Act also restricted the prosecution of children for offences.

The Children (Scotland) Act 1995 updated the 1968 Act to take into account the growing awareness of children's rights perspectives. It gave paramount consideration to the welfare of the child, legislated for the responsibility and rights given to parents underpinned by the belief that children are best looked after by their parents and that both parents should normally be responsible for the upbringing of their child and should share that responsibility. Local Authorities were given a duty to safeguard and promote the welfare of children in need and to support families by providing a range/level of services along with exercising statutory duties to prepare children and young people for ceasing to be looked after. A child is deemed to be 'in need' under the 1995 Act if s/he requires care and attention and if s/he is unlikely to achieve and maintain a reasonable standard of health or development without the provision of services or if s/he is disabled or is affected adversely by the disabilities of a family member.

### **Developing a Theoretical Understanding of the Needs of Looked After Children**

Drawing on the developing body of knowledge around attachment (Bowlby, 1969), the 'Children who Wait' study (Rowe and Lambert, 1973) sought to identify whether there were children in the care system who might benefit from long-term fostering or adoption and, in doing so, provided the first comprehensive picture of the state of child care in Great Britain. Rowe and Lambert (1973) discovered that once a child had been in care for six months the chance of rehabilitation back to the parents was slim. Furthermore, those children who seemed to experience fewer problems were more likely to find themselves fostered while the remainder were placed in residential care. Their conclusion that where a child does not have a functioning family the state needs to provide for them in a foster or adoptive home, rather

than in a residential context, initiated a steady decline, from a high point in the mid-1970's, in the use of residential child care placements (Bebbington and Miles, 1981). In England, for instance, "placements in community homes fell from over 25,000 to less than 2000 between 1981 and 2000" (Kendrick, 2012, p 288).

The greater consideration given to the needs of children, has led to increased cognisance of attachment theory (Bowlby 1969) in relation to both familial relationships and substitute care. Attachment theory refers to personality development in the context of a close relationship between a child and caregiver. Babies are born with a drive to seek proximity to a protective adult to ensure survival and they are dependent on the emotional and physical availability of those caregivers. Attachment ideas have increasingly come to influence policy. The Scottish Government report *Looked After Children and Young People: We can and must do better* (2007) emphasised the importance of stability, safety, emotional warmth and attachment for looked after children. The National Residential Child Care Initiative (Scottish Institute for Residential Child Care 2009) reported on associated areas including recommendations that the stability of placements should be a priority and that residential care should be used at an earlier stage in a child's journey through care if appropriate to do so. *Getting it right for every child* (GIRFEC 2007), addressed assessment through the integrated assessment framework. *These Are Our Bairns: a guide for community planning and partnerships on being a good corporate parent* (Scottish Government 2008) encouraged local authorities to provide looked after children with the love, security and chances that any good family would provide. Exploring this further, Furnivall (2011) highlights the importance of the substitute carer's capacity to reflect on behaviour presented by the child in order to understand their thoughts, feelings and needs, thus replicating a parent's attunement to their children.



## **Moving On - Developments in Legislation and Policy**

The current legal and policy framework for Looked After Children in Scotland has built on the 1968 and 1995 Acts and is found in and across a range of legislation, statutory instruments and public policy. These are:

- The Residential Establishments – Child Care (Scotland) Regulations 1996 makes provision regarding residential establishments where a looked after child may be placed.
- The Support and Assistance of Young People Leaving Care (Scotland) Regulations, 2003, detail the provision of aftercare support for those who have been looked after.
- The Adoption and Children (Scotland) Act 2007 has modernised, extended and improved the system of adoption in Scotland.
- The Looked After Children (Scotland) Regulations 2009 bring together care planning services for those looked after at home with care provision for those separated from their birth parents.
- Higher Aspirations, Brighter Futures (Scottish Institute for Residential Child Care 2009) undertook a strategic review of residential child care services, making sector driven recommendations to local and national government and to providers of residential child care to shape the future direction of services to ensure the needs of children and young people are met.
- Children’s Hearings (Scotland) Act 2011 now governs the Children’s Hearing System. This Act created a dedicated national body (Children’s Hearings Scotland); it established the role of the National Convenor to act as a figurehead for panel members and Area Support Teams, a national Children’s Panel and a Safeguarder Panel. In addition, it revised and modernised the grounds for referral to a children’s

hearing and it simplified and modernised the legal orders that could be made by panels.

- The Secure Accommodation (Scotland) Regulations 2013 is concerned with the use of secure accommodation for children and young people who are looked after by the local authority or for whom the local authority is responsible under Criminal Procedure legislation.
- The Children and Young People (Scotland) Act 2014 is designed to improve aftercare provision; ensure better permanence planning; extend the entitlement to remain in substitute care; clarify the definition and framework of duties and responsibilities related to corporate parenting; support the parenting role of kinship carers; and put Scotland's Adoption Register on a statutory footing.

On 1<sup>st</sup> April 2017, duties arising from the 2014 Act were implemented to ensure that public authorities take account of children's rights and well-being in fulfilling their functions.

Perhaps, most notably, the establishing of 'continuing care' and that following application by a care leaver, who is at least nineteen but not yet twenty-six, the local authority may provide the person with advice, guidance and assistance as appropriate in order to meet those needs.

## **Children's Rights**

In 1989, the United Nations General Assembly adopted the United Nations Convention on the Rights of the Child (UNCRC), which spells out the rights of all children under the age of 17 years. The UNCRC has the status of international law. It is one of the most comprehensive of all human rights treaties listing social, civil, political, economic and cultural rights. It is a

promise to all children to respect, protect and fulfil all of their human rights. The UK Government ratified it in 1991 and it came into force the following year.

In 2008, the UN Committee on the Rights of the Child set out where the UK was falling short of fully implementing the UNCRC. This prompted the Scottish Government to produce its own action plan, *Do the Right Thing* (2009), outlining 21 priority actions. Improvement is still required in some areas around the provision of alternative care e.g. a lack of consistency in advocacy provision, particularly for those whose views around contact with family members has been disregarded, has been identified as a concern, while children affected by parental imprisonment are thought to be particularly isolated and vulnerable. However, improved support for care leavers as a result of the Children and Young People (Scotland) Act 2014 has been welcomed.

Since 2004 Scotland has had a Children and Young People's Commissioner to promote and safeguard the rights of children and young people under 18 years, and all those up to 21 years of age who have been in care or looked after by the local authority. The Commissioner's role is to review law, policy and practice which relates to the rights of children and young people to assess their adequacy and effectiveness. Specific attention is paid to relevant provision under the United Nations Convention on the Rights of the Child, especially anything necessitating that the best interests of the child be a primary consideration in decision-making, and that due account be taken of the views of affected children and young people.

### **Outcomes for Looked After Children and the Impact on Policy**

Overall, looked after children and young people do not enjoy the same advantages, experiences and outcomes as other, non-looked after, children. Little is known about the

outcomes for children looked after at home or about the nature of the support given to those families. However, research on looked after and accommodated children tells us that children and young people share many of the same health problems but that care experienced children and young people encounter them to a greater degree (Scott and Hill 2006).

### *Health*

Many looked after children are born into families from lower socio-economic groups. Low income, deprivation and social exclusion are related to poorer mental, physical (including oral), emotional health and diet. Even before a child becomes looked after and accommodated, factors such as dysfunction or discord within the family can mean that they are at risk of missing routine health surveillance checks and participating in an immunisation programme. Moves between different foster homes or residential units can exacerbate this problem (Scott and Hill 2006). High rates of smoking and alcohol use, alongside an awareness and use of legal and illegal drugs are more prevalent in the looked after children population.

For those who are accommodated, poor information sharing and documentation between health care and residential child care staff and inflexibility in the appointments system for primary and secondary care were identified obstacles in meeting health needs.

### *Mental Health*

The mental health problems of looked after and accommodated children and young people are markedly greater than those of their peers and their experiences of poor mental health

appear to be more complex. 45% of children aged 5 to 17 years and looked after by a local authority had a diagnosable mental disorder (Meltzer et al, 2004). Early experience of poor parenting, trauma, bereavement or serious illness all impact on mental health. Events or factors leading to attempted suicide or suicidal thoughts are disproportionately evident in the lives of looked after and accommodated children and young people. However, it is important to note that there appears to be little difference in the mental health of those children placed with parents and those in foster or residential care. *Looked After children: We Can and Must do Better* (2007), *GIRFEC* (2015) and the work of the Looked After Children Strategic Implementation Group (LACSIG) emphasise the commitment of the Scottish Government to improving mental health services for children and young people.

### *Education*

Although evidence of low educational attainment by children in public care has been highlighted since the 1980's, national and local Government in Scotland has paid particular attention to these concerns following the identification of deficiencies in provision by the HMIS (Her Majesty's Inspectors of Schools) and the Social Work Services Inspectorate in 2001. The subsequent Scottish Executive reports, *Learning With Care* (2001) and *Looked After Children and Young People: We Can and Must Do Better* (2007), became key markers of policy and practice development. The latter emphasised the equal rights of looked after children, with a crucial connection made between well-being and success in education.

2015/16 saw improvements in the number of looked after children in a positive destination three months after leaving school (71% of LAAC) but when compared to the non-looked after population where 91% are in a positive destination there is still obvious room for improvement (Scottish Government, 2017b). Also, the attendance rate of looked after

children, particularly those in secondary education, is increasing steadily. However, there continues to be a disparity in experience in some areas. Most notably, 73 per cent of looked after school leavers were aged 16 and under, as compared to 27 per cent of school leavers more generally. Also the rate of exclusions among looked after children are still much higher than in the general school population (Scottish Government 2017b).

In considering the outcomes for looked after children and young people it is easy to see why policy makers and politicians conclude that public care is failing them. Forrester (2008), however, reminds us that it makes little sense to use outcomes for care leavers as the primary method of judging the impact of the care system. Given the prior life experiences of many care leavers, the relatively late point at which they enter the care system and the age at which they leave to return home or move to a permanent alternative, the suggestion that the outcomes for such children are a reflection on the care system as a whole is mistaken.

### **Coming to terms with the past**

The abuse of children and young people in residential care has become the topic for a number of inquiries in Scotland since the 1980's. In 2002 an in-care abuse survivor lodged a petition for parliament to take action elicited in 2004 a comprehensive apology by Scotland's then First Minister, Jack McConnell. The Scottish Government launched its National Strategy for Survivors of Child Abuse (2005) to raise awareness and improve services for survivors. The Historic Abuse Systemic Review (Shaw 2007), concluded that the quality of staff and carer is of utmost importance and demands rigorous procedures in selection and assessment, and ongoing training and support. It also stated that the culture of residential establishments must be an open one and that listening to children and young people is central to safeguarding

them from abuse and harm. The Review confirmed that previous responses to institutional abuse have included the development of important child protection policies and practices in residential child care settings.

In 2012, at the request of the Scottish Government, the Scottish Human Rights Commission and Centre for Excellence for Looked After Children in Scotland led a debate with survivors of in-care abuse and former providers of care. Subsequent debate led to a National Confidential Forum and Public Inquiry, set up as part of the Victims and Witnesses (Scotland) Act 2014, and extended the focus to abuse in residential care to include foster care and Independent Boarding Schools. On 17 December 2014 a parliamentary statement committed to an inquiry into historic institutional abuse, joining with survivors and agencies into taking the issues forward. The Historical Institutional Abuse Inquiry, expected to report back in late 2019, has begun the process of studying allegations of abuse in more than 60 institutions. Its aim is to investigate the nature and extent of abuse of children whilst in care in Scotland that took place within living memory.

In 2017 the Independent Care Review, was launched by the Scottish Government and driven by those who have experience of public care, to examine underpinning legislation, practices, culture and ethos of the entire care system with the intention of informing recommendations to improve the quality of life and outcomes for children in care. The aim is to make lasting changes to the care system to transform the well-being of children and young people.

### **Learning from the Experiences of Looked After Children**

For the majority of children and young people, foster and residential care provides them with good quality care in a safe environment. *Celebrating success: what helps looked after*

*children succeed* (Scottish Government 2006a) identified five areas critical to the success of looked after children. Interviews with thirty young adults and children with experiences of being looked after identified that the most important factor appears to be the stability of people who cared about them along with constancy in the places they lived. Receiving encouragement and support and being set high expectations were also deemed to be important by those who have been looked after. Finally, being able to participate and achieve was identified as contributing to their success (Happer, McCreadie and Aldgate 2006).

However, a significant minority of children do not receive the best quality care. Placement instability reduces the opportunity for some children to develop permanent, secure attachments whilst some experience abuse and/or neglect by those charged with ensuring their well-being.

*Who Cares? Scotland* representing the independent voice of care experienced children and young people continue their work around the promotion of *Identity: a positive sense of self* (*Who Cares? Scotland*, 2016) drawing attention to the fact that there is nothing in equalities law that currently protects care experienced individuals from discrimination. Additionally, *Who Cares? Scotland* began speaking to the sector about 'love' in 2013 highlighting that there is still no right for a young person to have a care experience centred on feeling loved. The complexities around reaching agreement in relation to the role of love in what is essentially a professional relationship might render this impossible, at least in the short term. Meanwhile, Nicola Sturgeon, Scotland's First Minister, in calling for current review, has made clear her commitment to ensuring that care experienced children and young people feel loved. It is perhaps that statement which most identifies a sensitive concern for the lives of children and young people. Legislation, policy and procedures, if not applied in a flexible, imaginative and creative way, serve only to protect the system whilst de-personalising the children, young people, their families and the professionals that support them.



## **Current Position**

Looked after children and young people are still amongst the most disadvantaged in society.

Government strategy to make positive and lasting improvements in the lives and wellbeing of Scotland's vulnerable children and families (Getting it right for looked after children and young people 2015) sets out three priority areas of work: early engagement, early permanence and improving the quality of care.

Preventative work is highlighted through the placing of a duty on local authorities to provide services to families where children at risk of becoming looked after and new support for kinship carers. Charities supporting looked after children and vulnerable families were awarded £3.28 million by the Scottish Government in December 2016 to support ongoing work.

## **Conclusion**

As can be seen from this chapter, the legal and policy context for looked after children and young people is complicated. In terms of the experience of care, what appear to be most crucial are the positive relationships and effective communication between looked after children and those who care for them. Procedure, law and policy guides us to maximise the positive elements of children and young people's experience of the care system, but it is our attitudes, knowledge, skills and values and how we put them into practice that ultimately brings about positive change.

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