



Young people in conflict with the law and the fostering task

Introduction

- In the UK we have the youngest age of criminal responsibility in Europe (age 10)
- Elements of the Police and Criminal Evidence Act 1984 (PACE) and other subsequent legislation ensures that children and young people (called juveniles within the system), aged 10 – 17, are treated differently from adult offenders and are provided with more safeguards
- The youth court is part of the magistrates court and deals with the trial and sentencing of young people, except where the charge is very serious, where they will be tried in the Crown Court. Where they are tried alongside an adult, they will be tried in the adult magistrates court or the Crown Court, depending on the charge
- Remand Foster Placements are sometimes used as an alternative to custody (not currently in Wales)
- Very small numbers of children are in remand, detained or other compulsory order (0.3% of CLA population = 21/5669) (2019)
- Over the last decade there has been a welcome focus on reducing the number of young people in custody and working on preventative and reparation models
- If a child looked after is in conflict with the law there is a role which the foster carer would undertake
- Remand foster carers need to be prepared for the role, supported throughout the placement and ensure their learning and development needs are met in order to best support a young person in conflict with the law

Upon arrest

- If a young person (YP) is arrested and taken to a police station, PACE requires the custody officer (CO) to ascertain the identity of a parent, local authority carer or any other person who has assumed responsibility for the young person's welfare and must inform them of the arrest
- The young person must have an 'appropriate adult' (see later). The appropriate adult (AA) may be a parent, carer or social worker. The CO must inform the AA of the grounds for detaining the YP and ask them to attend the police station
- The YP must be told about the role of the AA and of their right to consult with the AA in private (however this conversation is not 'privileged' as it is with a lawyer)
- In the vast majority of cases the YP may not be interviewed or asked to provide or sign a written statement under caution without the presence of an AA

The role of the AA

- To advise the YP being interviewed
- To observe whether the interview is being conducted properly and fairly
- To facilitate communication with the YP being interviewed

Following the interview

The police may either:

- Use one of the 'out of court disposals' – community resolution, youth caution or youth conditional caution - if the police are satisfied that there would be sufficient evidence to prosecute AND the YP admits to the offence. Out of court disposals are intended to be a reparative response to minor crimes and involve the local authority's youth offending service; or
- Charge the YP with an offence

If the young person is charged with an offence

The YP will make their first appointment in the youth court unless they are jointly charged with an adult.

The court has the following options:

Bail

- A YP has a general right to bail
- Bail may be refused if the YP is accused of an imprisonable offence AND there are grounds for believing that they will:
 - abscond, or
 - will commit further offence whilst on bail, or
 - will interfere with witnesses, or
 - for the young person's own protection or welfare

Refusal of bail

If a YP is refused bail they will normally be '**remanded to local authority accommodation**'. This term applies equally to YP who do not have looked after status and those who do. Therefore, if a YP who is already looked after is remanded to LA accommodation, they will usually return to their foster placement unless there are good reasons for ending that placement, in which case the LA is under a duty to provide another placement.

If the LA applies for specific conditions the court may impose those conditions (e.g. report to the police station, not to interfere with witnesses, make themselves available for the preparation of court reports and, in particular circumstances, electronic monitoring).

If a YP who is not looked after is remanded to LA accommodation, then the LA must find an appropriate placement.

In very rare circumstances the YP will be '**remanded to youth detention accommodation**' (a secure children's home, secure training centre or youth offender institution). This type of remand will only happen where particular grounds exist (i.e. the alleged offence is a violent or sexual offence or would, if convicted, be punishable with a term of imprisonment of 14 years or more **and** the court is satisfied that only YTA is adequate for the protection of the public).

The role of the local authority foster carer when a young person is in conflict with the law and remanded to LA accommodation.

This role could be as an existing foster carer of a looked after young person or a child remanded to LA accommodation from their parents' home. It must be borne in mind that the period of remand may last for a considerable period of time. The remand foster carers are requested to:

- provide a stable and secure base
- provide an engagement that encourages emotional development
- provide an intensive level of care and supervision (perhaps more intensive than the ordinary fostering task in terms of complying with conditions ordered by the court)
- provide an environment where an assessment of the young person's needs can take place
- provide intensive support with education / training etc
- enable the YP to start to develop a positive identity away from criminal activity
- enable the YP to understand risky behaviour and how to reduce it
- work with family members (if appropriate) towards reunification

In addition, the remand foster carer will need to:

- act as AA if called upon (particularly if required out of hours)
- work in partnership with the YP's social worker / YOT / YP's solicitor
- support the YP in complying with any conditions imposed (e.g. curfews / reporting to the police station)
- when in court support and advocate for the YP and be prepared to speak to the court about the YP, if required to do so

The creation of a Welsh fostering service for young people in conflict with the law

Foster carers can feel overwhelmed when young people come into contact with the Criminal Justice System (YOS/YOT). Preparation is required for anyone considering fostering a young person who is in conflict with the law. For the remand fostering task there is the need for an understanding of these young people:

- who are they: ages / gender / types of offence / rate of re-offending
- the backgrounds of the young people: developmental trauma / loss and separation / mental health difficulties / learning difficulties / disrupted education / school exclusion

This understanding would come from working closely with the professionals around the young person to gain a better understanding of them and their behaviours.

Preparation and additional training/support needs

The **preparation for fostering training** provides a good basis for understanding the effects of developmental trauma, not only upon children but upon young people.

The concept of providing a **secure base** is also fundamental to the provision of a remand fostering service and training in this would be deemed essential.

An **introduction to the youth justice system** training would be essential for the foster carer to have a good understanding of the system and where they fit in. They are not expected to be experts but it is good to have a basic understanding of 'the system' that the young person is in.

The **role of the AA** is an essential training and would form part of their important role in supporting the young person in their care.

Learning opportunities and focused supervision to help the foster carer in **dealing with conflicts of interest** (ie the foster carer's parental role and their role as a professional in the youth justice system) would also be recommended to ensure that the foster carer is clear in their role.

The foster carer would need to have **more regular supervisions** to ensure that they are meeting the requirements of their role and to ensure that they are being offered the well-being support which they require whilst undertaking this fostering task.

It is imperative that the foster carers are afforded **good communication** from all professionals involved and that they are invited to all relevant meetings and consulted with when appropriate. The foster carer needs to know who to contact and when to contact them to ensure good communication channels at all times.

Suggested exercise for foster carers

The following case study has been prepared by the Youth Offending Service and can be used to prompt further discussion about the role of the foster carer when supporting children and young people who come into contact with the criminal justice system.

Katie (16) came to the attention of the Youth Offending Service (YOS) after pleading guilty to two offences of common assault against her parents following a row after Katie was asked to get ready for bed. The younger sibling was present and was frightened.

Children's services had been involved for a long time due to concerns about neglect. Katie's engagement in education had deteriorated. When she did attend, she was hungry and appeared dishevelled. Over the years, Katie had lived with various relatives when relationships with her parents broke down. These arrangements were always short term, and she would return to her parents once tensions had eased.

Children's Services made the decision to accommodate Katie and she was subsequently placed with foster carers and a referral made to YOS. During the YOS assessment, it became evident that Katie was unable to recall any details relating to the offences. She said that when she loses her temper, she goes blank and can't remember anything. Katie has good recall of detail but when under stress, her memory becomes poor, the psychology service explained this reaction may be related to childhood trauma.

Katie had experienced significant and repeated trauma/abuse during her childhood; she had been the victim of physical abuse/or had witnessed domestic abuse on numerous occasions. This violence was normalised in her family. It became clear that what appeared to be misbehaviour (*behaviour the child can control*) on this occasion may be stress related behaviour (*behaviour the child cannot control*).

The foster carer was experienced but felt worried that she had limited knowledge of the criminal justice system and felt overwhelmed. The YOS worker, along with the Childcare Social Worker, supported the Foster Carer which helped her to fully understand the risks and the plan. It was reinforced to the foster carer that the quality and consistency of the relationship she was able to offer was the most valuable and effective way she could help Katie, rather than having an in-depth knowledge of 'the system'

The YOS assessment concluded there was a high likelihood of further offending, however, this was mainly in the context of the family home. The multi-agency plan to reduce the risks presented by this child and meet her needs was underpinned by a trauma informed approach.

Over time, Katie's physical appearance improved (she put on weight, looked more rested and her hygiene improved) and she was supported with a phased return to school. The YOS worker undertook sessions on emotional regulation, making the links between previous experiences and present behaviour. After a period of

counselling all professionals began to recognise subtle changes in Katie, she presented as more confident and started to talk about her future.

The foundations for this success were laid entirely by the foster carer who provided a secure base for Katie and consistently reinforced to Katie that she was worth investing in. As a result, the risks presented by Katie reduced and she did not commit any further offences. She was supported to move to independent accommodation but maintained a close relationship with her foster carer.

Case study discussion

- What are your initial thoughts? What struck you first about this situation?
- Describe what is happening to Katie when she loses her temper?
- Let's discuss the difference between 'misbehaviour' and 'stress induced behaviour'
- What do you think the challenges of working with birth family would be in this case? (It is recorded that 'Child on Parent violence' has been more common during Covid-19 restrictions)
- Let's discuss the criminalisation of children (age of criminal responsibility)
- Let's discuss how children get treated differently to adults in court (anonymity, welfare etc)
- How would you explain to a young person who YOS are and what they do?
- Would you look after Katie differently to how you would look after any child/young person in your care?

NB Please refer to our practice note on 'caring for children with complex emotional and behavioural needs' for more detail about how foster carers can be supported to respond therapeutically.