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Voluntary Accommodation of Infants, Children, and Young People in Scotland (Section 25) (Children (Scotland) Act 1995): An initial exploration

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Introduction

In Scotland, Section 25 (S25) of the [Children \(Scotland\) Act 1995](#) allows for parents to voluntarily place an infant, child, or young person into the care of a local authority in a placement away from the parental home (Children (Scotland) Act, 1995). Work across CELCIS teams with multiple local authorities has highlighted: substantial variation in how S25 orders are used; large numbers of children and young people who are on, or who have been on, a S25 order; and a large number of S25s which have been in effect for longer than two years.

These examples of S25 practice raise significant questions regarding S25 orders, including: the extent to which they promote the best interests of the child or young person; the type of placements that they are associated with; the extent to which they are entered into voluntarily; and the outcomes achieved for children and young people. These general questions interact with concerns which have already received some attention, such as the participation of children and young people in decision making, and the prevalence and impact of delayed decision making for children and young people.

There are many reasons that social workers might look to S25 orders as an appropriate process to secure a child's safety. These include the priority of the 'no order' principle (which states that compulsory intervention should only be taken where it is necessary to achieve the required outcomes). This is enacted directly by social workers and the Children's Hearings System to preserve professionals' relationships with parents and families, and because they believe that a voluntary placement is the best option for the child or young person.

Research shows that children and young people who are looked after often wait for long periods of time before decisions are made regarding where they will live permanently. The long-term use of placements on S25 orders may contribute to these delays. With an understanding that there is significant variation in the application of S25 orders between local authority areas, researchers undertook a non-systematic review of the literature to gain an understanding of the application of voluntary accommodation orders worldwide, and conducted an analysis of three Scottish local authority data sets to explore:

- how Section 25 is used by local authorities in Scotland
- the timescales associated with the care journeys for children on S25 orders
- long-term placement outcomes for children and young people on S25 orders.

The literature search highlighted potential issues in local authority choice between voluntary and compulsory measures, questions regarding the extent to which consent to voluntary accommodation is informed and voluntary, and court decisions that may have the effect of placing parental views before the wellbeing of children. Children Looked After Survey (CLAS) data was supplied by three local authority areas that participated in the Permanence and Care Excellence (PACE) programme delivered by CELCIS in

partnership with the Scottish Government. Although this is a limited set of data and some data quality issues were identified in the data provided, it was possible to look at children accommodated under S25 as at 31 July, children on S25 at any point during their episode(s) of care, and children on S25 when they ceased to be looked after. The data analysis found disparities between how the three areas used Section 25, including length of time accommodated.

Section 25

S25 sets out provision for local authorities to provide accommodation for 'any child' living, or found, within the area 'if they consider that to do so would safeguard or promote his welfare' (S25.2). This covers children who are lost or abandoned, who do not have any adults with parental responsibilities and rights (PRRs), or where 'the person who has been caring for him is prevented, *whether or not permanently* and for whatever reason, from providing him with suitable accommodation or care' (S25.1 (a)-(c), emphasis added). Examples of when an adult with PRRs may be temporarily unable to provide or arrange care for the child include entering inpatient medical care. Known as a voluntary arrangement, this provision cannot be enacted where any adult with parental responsibilities and rights in a child's life is 'willing and able' to provide or arrange care for the child (S25.6 (a)-(b)).

When children have been accommodated for less than six months, adults with PRRs have the right to remove the child from accommodation at any time. Once the child has been accommodated for a continuous period of six months, the adult with PRRs wishing to remove the child from the local authority's care must submit written notice at least fourteen days in advance. The legislation does not place a time limit on how long accommodation under S25 is permitted to last, only that it includes any voluntary placement longer than 24 hours and allows for parents to be permanently unable to care for their children.

Similar provisions are in place for voluntary accommodation in England (Children Act, 1989, Section 20) and Wales (Social Services and Well-Being (Wales) Act, 2014, Section 76). Both the English and Welsh Acts apply in the same circumstances as the Scottish Act in regards to a child's situation prior to becoming accommodated, and in regards to when accommodation must not be provided (such as when there is an adult with PRRs willing and able to arrange for the child's care and accommodation. Technical differences exist between the Scottish legislation and those enacted in England and Wales, largely around the mechanisms for accommodating a child in a local authority in which they are not 'ordinarily resident'. The requirement for parents to submit written notice prior to removing a child that has been accommodated for six months or longer does not apply in the Welsh and English laws. While the different social contexts and technical points mean that issues arising with the implementation of Section 20 in England and Section 76 in Wales cannot be unquestioningly applied to Scotland, the similarity in legal processes means that existing literature is useful to guide areas of inquiry.

Findings

Literature review

A short, non-systematic literature search was undertaken to identify academic and grey literature on infant, children, and young people's voluntary care arrangements. Several papers focussing solely on voluntary respite care in the US and Australia were excluded.

The legislation, guidance, and use of voluntary arrangements in Scotland, England, Wales, and the USA mean that comparisons between jurisdictions need to be made cautiously. For instance, in the USA there is a federal time limit of 180 days to any voluntary accommodation unless there is a judicial determination that the placement should continue (Hill, 2017; Semanchin Jones et al., 2018). Federally, parents are not required to relinquish legal custody of children although this is a requirement in some states (Semanchin Jones et al., 2018). The practice differences include the predominant use of voluntary placements for older children or adolescents in the USA, and often in order to access physical or mental health care (MacDonald & Brook, 2009; Nankervis et al., 2011).

Despite these limitations, there is still relevant learning to be shared between these different contexts. Literature from each location highlights similar practice and ethical considerations faced by social workers, and it is these that we focus on here.

Prevalence of voluntary accommodation

At present, little is known about the relative rates of accommodation under voluntary orders in Scotland, England, or Wales. However, recent work by Bilson and Bywaters indicate that 44% of children accommodated in the first week of life are accommodated under voluntary provisions (2020). Initial reporting from the Permanently Progressing study found that nearly half of those initially accommodated away from home were accommodated on S25 orders and that S25 is used across all age groups (Biehal et al., 2019, pp. 18, 20). Data collected by CELCIS for the Permanence and Care Excellence (PACE) programme, shows that across three local authorities, rates of accommodation under S25 vary from 47% to 53% of initial placements being under voluntary provisions. The lack of information about the use of Section 25 to place children and young people away from home contributes to concerns around the care planning and outcomes for children and young people who are accommodated through voluntary placements.

Parental involvement and informed consent

A Family Rights Group paper reports on a range of consultation and engagement activities undertaken with parents, wider families, and social care staff. In a survey with social care staff, no respondents felt as though the information provided to parents on voluntary arrangements was sufficient, and staff also believed that more time was required for families to process the information and come to a decision (Lynch, 2017, p.

49). In an online questionnaire with 38 parents and kinship carers, many respondents noted that they were unsure about what had initially triggered the local authority to explore voluntary arrangement for the child (pp 50-51). Respondents also discussed not knowing that they could have declined the voluntary accommodation, the implications of the arrangements for parental responsibility, their right to seek independent advice, how long the agreement would be in place, and how financial issues such as benefit entitlements would be affected as a result of the S20 (p 51).

Masson also raised the possibility of parents not understanding the difference between voluntary accommodation and a child being removed from their care through compulsory measures, parental rights to contact with children, and right to be involved in discussing length of care (Masson, 2008, p. 56). Lewis et al. (2015) noted that social workers themselves felt this power imbalance when working with parents with learning disabilities, with one social worker stating "...a lot of people with learning disabilities are more compliant and have less understanding and are more likely to take that threat of Section 20 very seriously and agree more readily than other parents." (Lewis et al., 2015, p. 331).

The issues of consent in relation to voluntary accommodation has also been the subject of discussion within court. Mr Justice Munby highlighted the difference between informed consent, acquiescence or assent, and coercion or compulsion. "...the use of Section 20 is not unrestricted and must not be compulsion in disguise. In order for such an agreement to be lawful, the parent must have the requisite capacity to make that agreement....That is implicit in a due regard for the giver's rights under Articles 6 and 8 of the European Convention on Human Rights" (Re CA (A Baby) (EWHC 2190 (FAM) 30 July 2012, in Holt et al., 2013, p. 165).

These issues are also mirrored in research into voluntary placement agreements in the USA. Pelton highlights similar concerns around coercion, stating that "...CPS agencies and their workers should not be permitted to encourage parents to sign so-called voluntary placement agreements...parents told me that they were threatened by caseworkers with the removal of all of their children if they did not agree to the placement of one of them, and with the prospect of permanent rather than temporary removal if they did not sign a "voluntary" placement agreement' (Pelton, 2016, pp. 430-431).

Parents in the Family Rights Group study felt as though they had been excluded from decision-making for their children where a S20 arrangement was in place (pp 60). Excluding parents from the child's plan planning process is concerning, yet the paper appears to question the local authority's ability and role to act in the best interests of infants, children, and young people in their care. This paper raised an issue with the fact that children already on S20 can be placed with adopters approved as foster carers through concurrency placements without parents having legal advice before the arrangement is made (pp 9). The paper also presented a court case that determined that the duties on local authorities to promote and safeguard the welfare of children does not

allow local authorities to change the placement for a child on a S20 against the wishes of the parents (pp 13).

Local authority avoidance

Several documents mentioned evidence that local authorities may:

- Face pressure to use voluntary accommodation in order to avoid care proceedings or avoid care proceedings where they would otherwise be appropriate (Masson, 2008; Lynch, 2017)
- Be reluctant to provide voluntary accommodation, particularly in order to avoid after care support (Gillen, 2009; Masson, 2008)

Masson (2008) summarised several studies and argued that local authorities are reluctant to progress care proceedings due to the expectation that intervention should be a last resort; perceptions of the impact that being in care may have on children; limited resources and financial impact; and, legal difficulties (pp 70). Masson also discussed the financial impact of undertaking care proceedings and noted that local authorities had used 'voluntary' accommodation where compulsory provision would have been appropriate. She cites a care profiling study in which social workers were expected by local authority lawyers and courts to have explored voluntary accommodation with parents prior to applying for an emergency protection order (Masson et al. 2004 as cited in Masson, 2008, p. 65). Similarly, a consultation with social care practitioners, undertaken by Family Rights Group, found that they felt they faced pressure to use S20 in order to avoid care proceedings (Lynch, 2017, p. 60). This concept of intervention being a last resort is mirrored in the Scottish system in the 'No Order' principle discussed in the introduction, that "...requires us to strive to reach non statutory measures, and to involve the parent wherever possible" (Education and Culture Committee, 2013 para. 3).

In an article for Community Care, Hunt reported on a few English and Welsh local authorities either charging, or planning to charge, parents for their child's voluntary accommodation. Conwy Council in Wales received cabinet approval in 2009, and the London Borough of Merton introduced a means-tested policy for charging parents in 2004 (Hunt, 2009, p. 18). A director of children's services from Hammersmith and Fulham is quoted as referring to 'self-absorbed, chaotic people' placing their children into care (Ibid.). While the author lists 'parents being temporarily unable to cope on their own' as a valid reason for voluntary accommodation, she does not challenge the view that an individual's chaotic lifestyle is 'self-absorbed' and a choice to not parent rather than an indication that their support needs are not being met by local services. The article does, however, include both the Children's Commissioner for Wales and director of children's services at Voice raising concerns. Although the brief literature review did not uncover mention of a fee system in any local authorities in Scotland, charging parents could delay the parent receiving appropriate support and the child accessing appropriate care, placing them at further risk.

Contrary to use of voluntary accommodation to avoid compulsory measures, Masson cited historical evidence that local authorities have avoided voluntary accommodation for 16 and 17 year olds who are homeless or unaccompanied minor asylum seekers by providing alternative support in order to sidestep responsibilities to care leavers (Masson, 2008, pp. 64–65). This may have changed subsequently, as guidance on the Prevention of Homelessness from the Ministry of Housing, Communities and Local Government (2018) provides clear guidance that “...where duties are owed under section 20 of the 1989 Act they take precedence over the 1996 Act in providing accommodation and support for children in need who require accommodation” (2018 s.6.6).

Overall, the small number of papers discovered in this literature review highlighted issues with voluntary accommodation in England and Wales that may also take place in Scotland, affecting infants, children, young people, and their families:

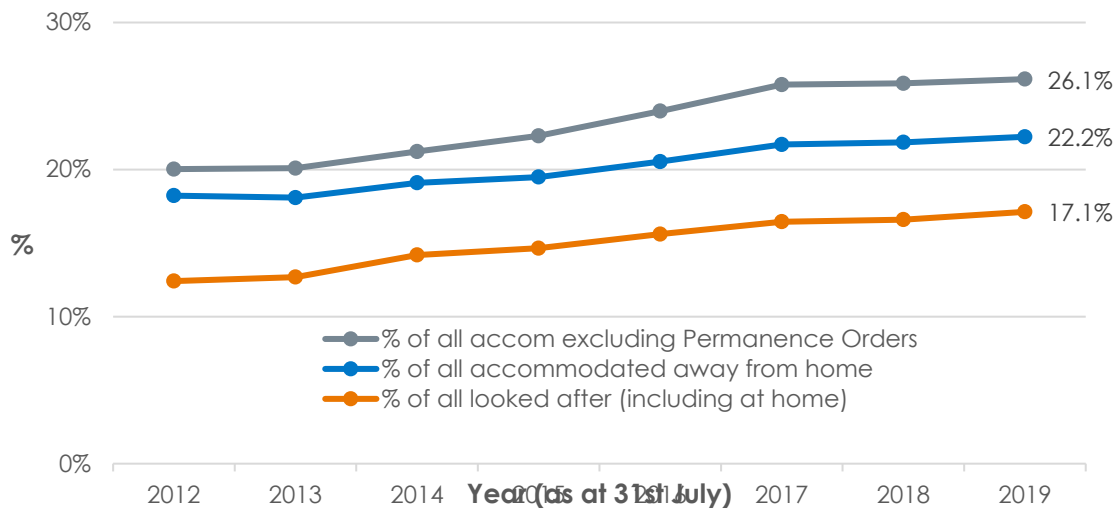
- the extent to which voluntary accommodation is voluntarily entered into by parents
- parental understanding of the voluntary arrangement and their rights to be involved in decision-making or care planning
- potential barriers faced by parents who wish to make use of voluntary accommodation, and the negative impact on parental support needs and risk to children as a result
- local authorities delaying compulsory measures for a range of reasons and only proceeding once voluntary arrangements have been ruled out. This may add delays and uncertainty to children’s permanence decisions.

Local Authority Data analysis

The annual CLAS return contains a full legal status history for continuous episodes of care that were open as at 31 of July in the relevant year, as well as full legal status history for any cases that were open in the year prior to the 31 of July. A child may have more than one episode of care if they ceased to be looked after during the year before the 31 of July and subsequently became looked after again during the year. The return also includes full placement histories for children looked after during the year, and information on destination for those ceasing to be looked after.

Examination of national CLAS snapshot data as at 31 July each year (figure 1) shows us that the proportion of children on Section 25 has increased steadily from 2012 to 2019. Just over one in five of all children were looked after away from home on a voluntary basis in 2019. The figure rises to just over one in four when children and young people who already have legal permanence via a Permanence Order are excluded.

Figure 1: Proportion of currently looked after accommodated under Section 25



Comparison of three local authority areas

The three local authorities included in analysis for this paper were a large urban authority (LA3), an authority with a large geographical area and dispersed population centres (LA2), and an authority area with several large towns in close proximity (LA1). Figure 2 shows the size of the population of children in care in LA1 and LA2 is shown in relation to the size of the population in LA3, the largest of the three.

Figure 2: Relative size of looked after populations



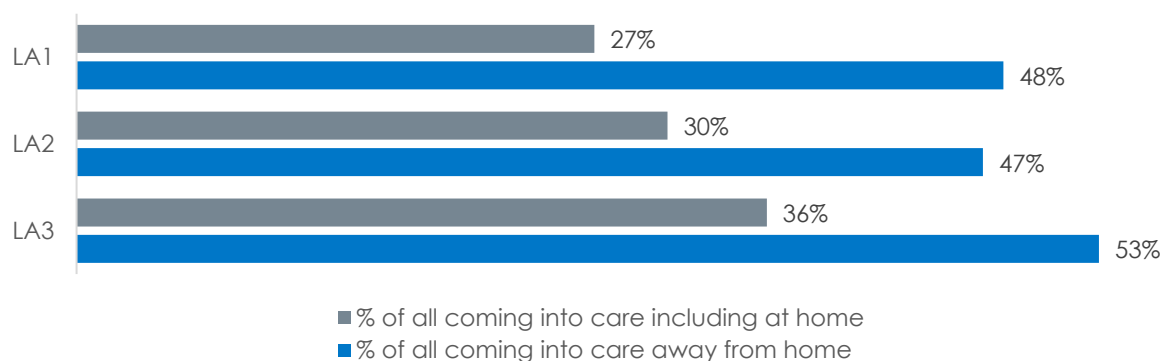
Data was supplied for different reporting years: One set is for 2017-18, and the other two are for 2016-17.

The data analysis explored the following topics within the limited sample:

- Prevalence of children and young people accommodated under S25, including those looked after at home first
- Variation in time on S25
- Placement type
- Next steps after S25

Prevalence of voluntary accommodation in the three local authority areas

Figure 3: Voluntary reception into care



Voluntary reception into care is widespread practice across Scotland, and this is the case in all three local authority areas. At the point of coming into care, the proportion of all children and young people for whom S25 was used ranged from 27% to 36% (Figure 3) when children and young people coming into care at home are included. Looking only at children and young people accommodated away from home at the point of reception into care, S25 was used for around half of these in all areas (Figure 3). LA3 had the highest proportion of children and young people accommodated on S25 of the three areas (53%), and it also used S25 more than the other areas when children and young people already in care at home were subsequently accommodated away from home (Figure 4.).

Figure 4. Proportion accommodated on S25 after being in care at home

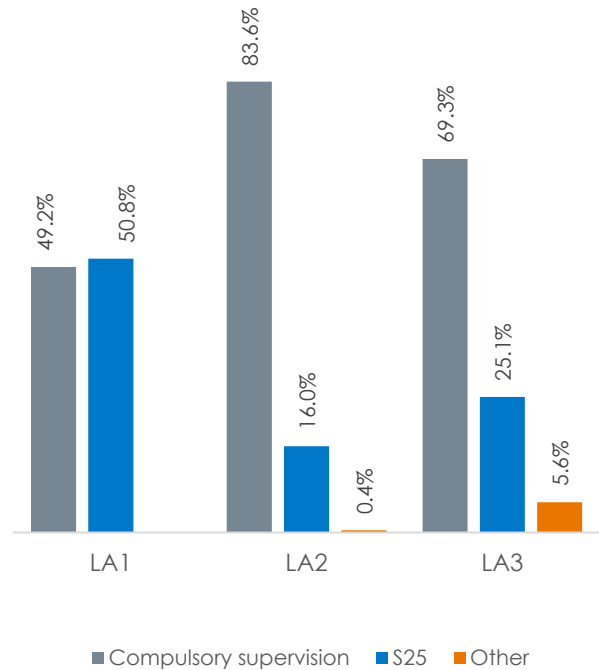


Voluntary arrangements were generally much more likely to be used at the point of reception into care, rather than for children and young people already in care at home who then became accommodated away from home.

Point in time local authority data

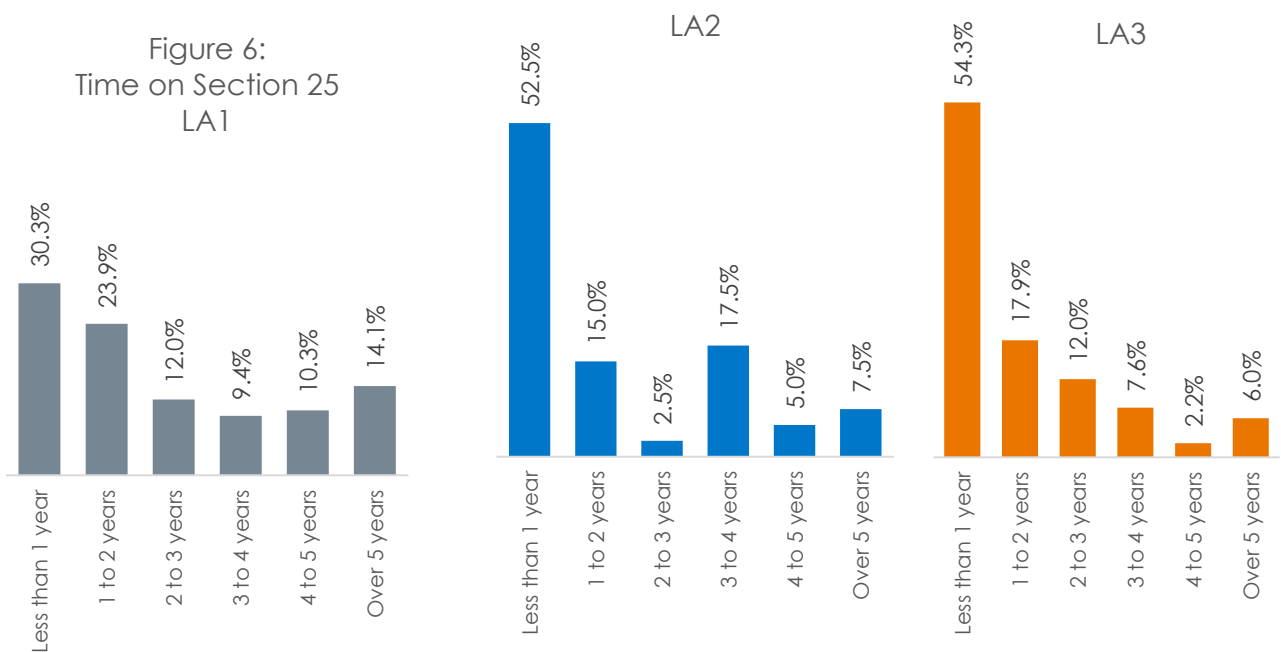
Differences in use of Section 25 across the three areas become more apparent when point in time data on the 31 of July of the reporting year is considered. Figure 5 shows the proportions of children and young people in care away from home on a voluntary basis, and those with a Compulsory Supervision Order (children and young people who have achieved legal permanence with a Permanence Order are excluded). Over half of children and young people in LA1 had a S25 legal status, compared to a quarter in LA3, and one in six in LA2. Although LA3 had a higher proportion of children and young people coming into care away from home on S25 than LA1, the proportion of the currently looked after population in LA3 on S25 was just half that of LA1. This suggests that children and young people in LA1 remain on S25 for a longer period than those in LA3.

Figure 5. All looked after away from home on 31 July excluding POs



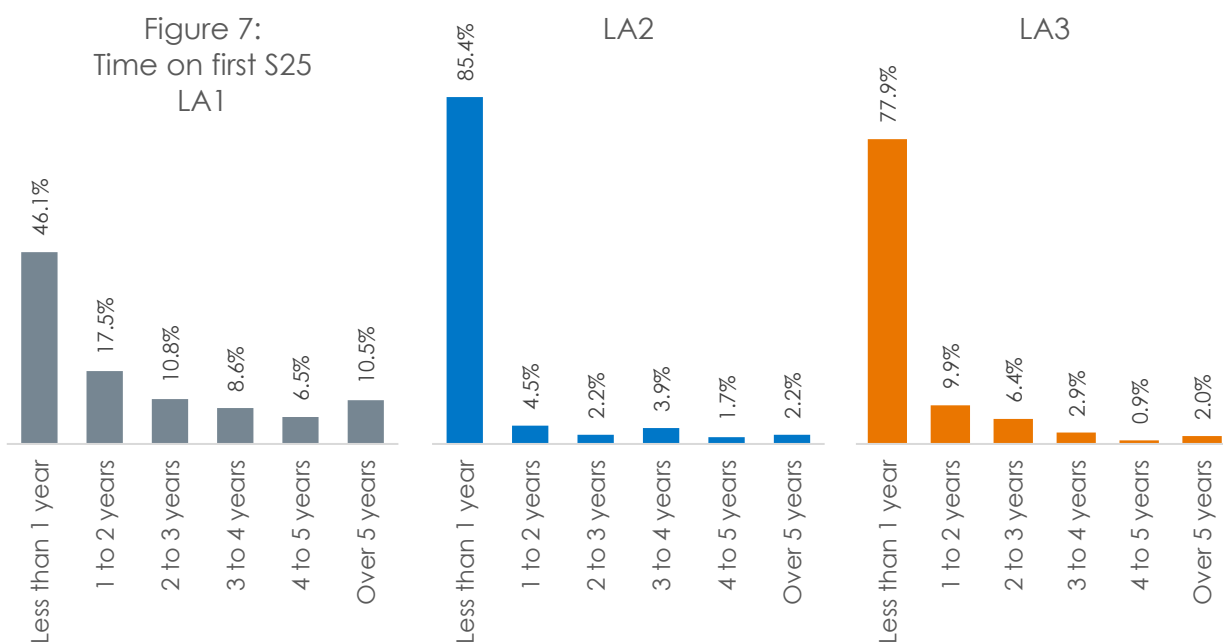
Length of time on S25

Figure 6: Time on Section 25 LA1



The suggestion that children and young people from LA1 tend to remain on S25 for longer periods of time is confirmed by looking at the length of time children and young people with open cases on the 31 of July had been on S25 (Figure 6).

Just 30% of children and young people in LA1 had been on a S25 legal status for less than a year, compared to over 50% in LA2 and LA3. As this is point in time data, it does not include children and young people who had previously had a S25 legal status. To explore this further, Figure 7 below shows the length of time of the first period on S25 for all children and young people who had this legal status at some point, thus combining closed periods on S25 with those that were ongoing.

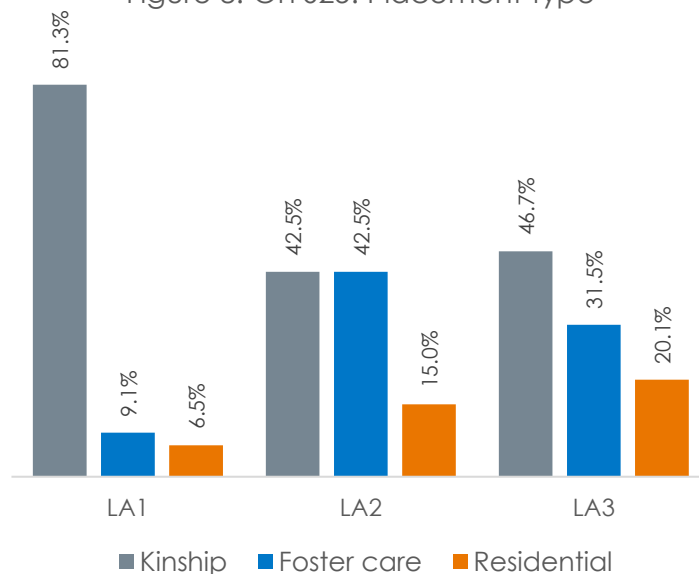


The difference between areas becomes more stark, with S25 being used for much longer periods in LA1. In LA1, 36% of S25 legal status periods had lasted more than two years, compared to 12% in LA3 and just 10% in LA2. In LA1, 10% of legal status periods had continued for more than 5 years and, though proportions of longer periods on S25 were lower in the other local authority areas, some children and young people did experience long periods with a Section 25 legal status in these areas too. In LA2 and LA3, remaining on S25 for more than a year is the exception. In LA2, over 85% of children and young people had a S25 legal status for less than one year, compared to 78% in LA3 and just 46% in LA1.

Type of placement

In LA1, over 80% of the children and young people coming into care away from home on a voluntary basis were in kinship placements. In LA2, which had the smallest proportion of children and young people coming into care away from home on S25, equal proportions (42.5%) were in kinship and foster care placements, and in LA3 the highest proportion (46.7%) were in kinship placements. With eight out of ten children on Section 25 in kinship placements in LA1, there is clearly a strong association between use of Section 25 and placement with kin.

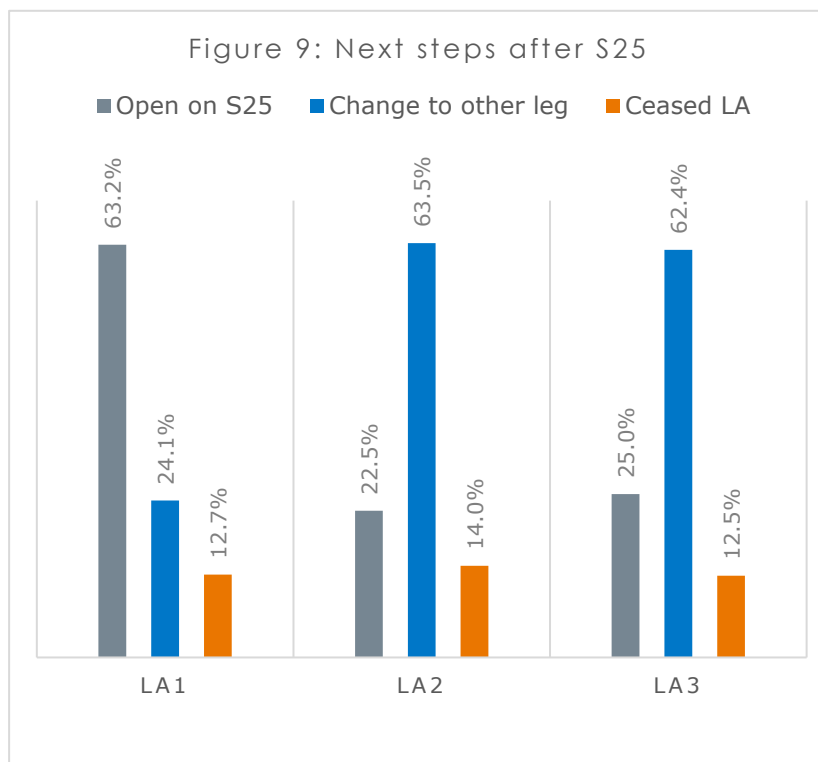
Figure 8: On S25: Placement type



Next steps after S25

Almost two thirds of children who had a S25 legal status at some point in LA1 were still looked after and accommodated on Section 25 at the end of the reporting year (Figure 9). This is in sharp contrast to LA2 and LA3 where we've already observed that children and young people generally remain on S25 for much shorter periods of time (Figure 7). In these two areas, over 60% of children and young people had moved to a different legal status, which was most often compulsory supervision away from home. Ten percent of children and young people on S25 in LA2 moved to compulsory supervision, with only four percent changing to this legal status in LA3. In each area fewer than one in six children and young people left care immediately after being on S25.

Figure 9: Next steps after S25



Of those leaving care, around half in LA1 and LA3 had a destination of home with parents

recorded, with just over a quarter in LA2 returning to parents. With comparatively few children moving to compulsory supervision at home or leaving care to return to parents, it appears that voluntary accommodation away from home is not often used successfully as an interim measure before a return to parents.

Issues Arising

The literature review and preliminary analyses of data from three local areas within Scotland have raised a number of issues which highlight the lack of clarity relating to the use, purpose, process, and outcomes of S25 orders in Scotland. The data presented here shows significant variation in the use, duration, and outcomes of S25 orders between the three local areas. This cannot tell us anything about the quality of care or service being provided to children and families in these areas, but does raise questions related to the reasons for this variation, and whether S25 is being used differently in different local areas.

The literature presented has highlighted concerns raised in Scotland, England, Wales, and the US in relation to the use of voluntary accommodation orders or processes. These concerns include the reasons for using voluntary measures, the degree to which informed consent is given by parents, and the extent to which voluntary accommodation serves the best interests of children and young people.

Given the extensive use of S25 orders in Scotland, we can infer that it is a practice that is valued by social workers as a useful tool in their work with children and families. However, given the frequency of use of S25 orders, we do not appear to have a clear understanding of the when, for whom, and in what circumstances S25 orders are used, or what support and outcomes are achieved through their use. This is a significant gap in our understanding of child and family social work within Scotland.

Here, we have articulated questions which need to be addressed to further our understanding of how S25 orders are used, and their impact and benefit for children and young people with care experience in Scotland.

Use and Purpose of Section 25 Orders

- Is the variation in frequency of use and duration of S25 orders demonstrated in these three local areas replicated across Scotland, and what are the reasons for this?
- Is the pattern in placement type under S25 orders demonstrated in these three local areas replicated across Scotland?
 - If so, what are the reasons for using S25 for kinship placements rather than securing them with S11 kinship orders?
- In what circumstances are S25 orders initiated by parents and initiated by social worker departments?

- What circumstances and duration for S25 orders considered inappropriate by social workers or social work departments, and why?
- What circumstances and duration for S25 orders considered appropriate by social workers or social work departments, and why?

Process of Section 25 Orders

- How are parents made aware of S25 orders?
- How do parents understand their rights in relation to S25 orders?
- How is informed consent assured in relation to S25 orders?
- How are children and young people involved in making S25 decisions?
- What reviewing and monitoring processes are in place for children and young people on S25 orders?
- What supports are offered to parents or carers whose children are accommodated under S25 orders, to ensure they can return to caring for their children in the future?

Outcomes of Section 25 Orders

- To what extent do S25 orders promote the welfare and best interests of children and young people?
- Is the variation in placement type following S25 orders demonstrated in these three local areas replicated across Scotland?
- Does the length of S25 placement affect the permanent destinations achieved for children and young people?
- To what extent do S25 orders facilitate parents being able to care for their children?

Further Research

With an emerging picture of varying local practice regarding voluntary accommodation in care, and the knowledge gap around how S25 orders are understood, implemented, and experienced in Scotland, the following questions arise for future research:

1. How are Section 25 orders understood and used nationally, including any variance between local authorities, particularly in regards to making permanence decisions for infants, children, and young people?
2. Are Section 25 accommodation orders being used to the greatest benefit for children, young people, and families in Scotland?

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