



# **Joint Lincolnshire Protocol to reduce offending and the criminalisation of care experienced and vulnerable children.**



***Future4Me***

## Introduction

Over recent years there have been excellent successes in Lincolnshire in addressing youth crime and this has undoubtedly contributed to improved longer term outcomes for children and young people and enables them to make a positive contribution to their communities. By working together in partnership to address youth crime, we also enhance community safety and reduce the likelihood of being a victim of crime in Lincolnshire.

However, children in care continue to be significantly over represented in the youth justice system relative to their non-looked after peers. Less than 1% of the population comes into care, but those children in care are still 5 times more likely to have involvement with the Criminal Justice System (CJS). Research suggests that there is a systemic problem across England and Wales that leads to Police intervention, often over minor incidents that would never come to officers' attention if they happened in conventional family homes.

*'Looked after children are significantly over-represented in the criminal justice system. This is a national problem which central and local government, and local criminal justice agencies, can and must do more to address.'*

*'Reductions in the rate at which children in care are criminalised will not happen by accident. It takes leadership nationally and locally, a commitment to good practice, effective joint working and operations and performance measurement founded on reliable data.'*

**Lord Laming (2016) In Care, Out of Trouble (Prison Reform Trust): How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system.**

Therefore, the challenge within Lincolnshire is two-fold. First, it is incumbent upon us all as agencies to recognise the pre-existing risk factors that place children in care at greater risk of offending and take steps not to exacerbate these. Secondly, the challenge is to provide the children and young people in our care with additional protection and maximise the prospects of them achieving their greatest potential.

### Purpose of the Protocol

It is crucial that in all encounters with children in care, their complex needs should be recognised, given due consideration, and crucially that they be treated as children first.

As a partnership within Lincolnshire, we are committed to a multi-agency approach in order to support our children and young people to achieve the best outcomes, and wherever possible divert them away from criminal and anti-social behaviour, to prevent reoffending and the escalation of offending, and to prevent them from being inappropriately criminalised.

As a partnership we are committed to discharging our corporate parenting responsibility to all our children and young people. Through this protocol we aim to think like a parent and ensure the best outcomes for our children through restorative means.

It is an expectation that the standards and guidance contained within the Protocol act as a working framework for ensuring best practice in dealing with children in care settings across Lincolnshire. The protocol aims to strike a proportionate balance between the rights and needs of the children and young people, the rights of victims, of staff and carers, and the decision to involve the police in such incidents.

Local Authorities and the Police should work closely together setting out how they will support children in care and care leavers who may be at risk of offending to prevent unnecessary criminalisation. These strategies should include details of measures in place locally to divert young people from involvement with the Justice System and identify them when they are at greater risk.

Lincolnshire Police are committed to working closely with the Local Authority, as the combined Corporate Parent to all of Lincolnshire's Children in Care and Care Leavers, to developing restorative approaches to addressing criminality where appropriate in those who have left care and to ensuring the force promotes the welfare of all those it has a duty as a supporter to the Corporate Parent.

Where a Looked After child is thought to be at risk of offending (or reoffending), both the [Care Plan](#) / Pathway Plan and the [Placement Plan](#) will include details of the support that will be provided to prevent this and the Police will be involved in that plan wherever it is essential to prevent criminalisation. Such plans will be fully supported by mainstream/universal services and the Police are committed to being part of the network of support around that plan.

This protocol acknowledges the good practice and professionalism of all agencies and staff working with children in care, and aims to:

- Reduce the prosecution and potential for unnecessary criminalisation of children in care, wherever possible, by encouraging the use of restorative approaches.
- Support and develop clear processes for addressing offending incidents in residential homes.
- Clarify the information required by the police and CPS in considering prosecutions.
- Emphasise the importance of regular and effective liaison between residential home staff and Lincolnshire Police.
- Reinforce and extend the multi-agency links and commitment to reduce offending by children in care in Lincolnshire.
- Strengthen the use of alternative approaches in social care settings including the use of restorative practice in resolving conflict

Ensure that the Criminal Justice Agencies come together to be part of the plan (where necessary) to minimise the risk of future criminality and aid reparation to the community and or victims.

### **National and Statutory Context**

This protocol should be underpinned by the principle that all officers and practitioners must have the highest regard for the safety, welfare and well-being of children and young people as required under S10 and S11 of the Children Act 2004 and the United Nations Convention on the Rights of the Child. In addition, Working Together to Safeguard Children 2018 outlines the principles that all professionals should follow when working with children and young people to ensure a child centred approach.

“This guidance [Working Together 2018] focuses on the core legal requirements, making it clear what individuals, organisations and agencies must and should do to keep children safe.

In doing so, it seeks to emphasise that effective safeguarding is achieved by putting children at the centre of the system and by every individual and agency playing their full part. A child centred approach to safeguarding.

This child centred approach is fundamental to safeguarding and promoting the welfare of every child. A child centred approach means keeping the child in focus when making decisions about their lives and working in partnership with them and their families.” WT2018, page 9

As corporate parent, local authorities have a statutory duty to safeguard and promote the welfare of the child who has come into care. ‘Corporate Parent’ means the collective responsibility of the council, elected members, and employees, and a duty to cooperate from partner agencies, for providing the best possible care and safeguarding for the children who are looked after by the council. There is a legal requirement on local authorities to co-operate with other organisations to help them meet their statutory obligations and on certain other bodies, including the police and probation services, to assist the local authorities in fulfilling these duties.

Regulation 40(4) requires the registered person to notify Ofsted and other relevant persons if one of the situations specified in regulation 40(4)(a)-(d) occurs, or if there is an incident relating to the protection, safeguarding or welfare of a child living in the home which the registered person considers to be serious (40(4)(e))<sup>1</sup>.

Examples of incidents that are likely to be considered serious and affecting the welfare of a child include: a child being the victim or perpetrator of a serious assault; a serious illness or accident; a serious incident of self-harm, or serious concerns over a child’s missing behaviour, particularly where the child is considered to be at grave risk due to age or vulnerability or where they have been missing for a considerable period of time and their whereabouts is unknown.

This is not an exhaustive list and homes must assess each case individually taking into account any patterns of behaviour or unusual behaviour which may indicate an increased risk to the child. Homes should also consider the frequency of incidents and judge whether their cumulative effect makes notification appropriate, even if in isolation each event would not warrant this.

It is for the registered person to judge whether the incident is sufficiently serious to make formal notifications and, if it is, which other relevant persons may be notified, for example, the police, probation service, health professionals, the local authority for the area the home is located in (if this is not the child’s placing authority), and others involved with the care or protection of the child.

The Lincolnshire Safeguarding Children Partnership [Joint protocol for Missing Children and Young people](#), is important for the safeguarding of children and families across Lincolnshire, or those using services in the area. It should be read and implemented, where necessary, by all practitioners and managers working with children or young people who are at risk of going missing from home or care or are already doing so.

### **Early Help and Police relationships within care settings**

The experiences of children and young people can differ significantly in their interaction with the Police. If such experiences are negative, it may result in a lack of trust in Police practice. For children with existing vulnerabilities, the failure to fully trust or engage with Police may represent a key risk factor. A greater focus must be placed on the principle of building

---

<sup>1</sup> The Children’s Homes (England) Regulations 2015 and the Guide to the Children’s Homes Regulations including the Quality Standards 2015

children's trust and confidence in the police as a public service and finding proportionate responses to incidents

*'Children's first encounter with police officers can have a lasting effect on how they view the police and engage with them as adults, it is important in shaping children and young people's attitudes, yet for a significant number of children and young people this experience is a negative one.'*

**Baroness Massey of Darwen (2013) - All Party Parliamentary Group for Children**

Children and young people have a distinct set of rights and entitlements as set out in the United Nations Convention Rights of the Child. However, there are examples of children and young people being treated as 'mini-adults' within the criminal justice system which overlooks the unique needs of children in care within Lincolnshire.

Evidence indicates that the Police are far more likely to be called to a children's home than a domestic setting to deal with a wide range of issues relevant to complex adolescent behaviour. The attendance at care homes to address safeguarding and missing persons concerns have the obvious potential to escalate to matters which may lead to criminalisation. Awareness and careful judgement and consideration of children's complex needs, and emotional distress should always be a factor in dealing with such scenarios.

It is important to reflect that all people should feel safe in the place that they live, whether that is in a family home, semi-independent living offer or children's home, and where appropriate have confidence in the criminal justice system to intervene and protect them where it is necessary.

In Lincolnshire, the primary police contact for Children's Homes are the missing person co-ordinators within the Police Safeguarding Hub. This predominantly is to support the Philomena Protocol, which allows basic information about a young person to be recorded to support finding them effectively and quickly should they go missing, but they can provide advice and guidance on other matters.

Additionally, the police have a named single point of contact (SPOC) for each Children's Home. This is the PCSO for the area where the Children's Home is located. The SPOC will enable a positive interaction between the police and looked after children. Each of the semi-independent living offers will maintain good relationships with the local PCSO.

This interaction is intended to fulfil an engagement role building positive relations between the police and Children in Care staff as these officers are experienced in problem solving policing seeking positive outcomes. Where encounters happen away from the child's home, officers should seek to establish if the child is or has been care experienced through conversation in the first instance. Further checks can be made with Children's Services as appropriate.

It would therefore be counterproductive for the missing person co-ordinators or SPOCs to investigate criminal offences within the Homes in anything other than in an advisory capacity.

Lincolnshire Police is victim focused and must assess the threat, harm and risk involved in any incident reported. In the vast majority of incidents (unless so serious that prosecution will be the default position) they will be victim led, if the victim does not wish to pursue a complaint then that will be a major consideration and factor in determining the Police response and subsequent action.

Consideration must also be given to the ongoing implication of the care and placement for any child who is arrested with regards to their accommodation requirements if released on bail or charged, subject to victims and witnesses residing or working at the offence location.

## Classification of Incidents

It is important to see incidents in the context of the needs of the individual child and their care plan and consider whether involving the police is an effective and proportionate response. The protocol reflects three main incident classifications (Tier 1, 2 and 3) based upon a number of key factors and considerations including aggravating and mitigating circumstances.

Factors to be considered in deciding whether to report offences are listed below: -

- Wishes and best interest of the victim
- Nature and seriousness of the allegation
- Probability of a repeat incident
- Previous incidents of a similar nature by the same child or young person
- Previous relationship between victim and young person
- Effectiveness of police action/court proceedings
- Impact of police involvement on the child's overall care plan
- Availability of alternative courses of action (e.g. restorative approaches)

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none"> <li>▪ the offence is violent or induces a genuine fear of violence in the victim</li> <li>▪ it is a sexual offence</li> <li>▪ the offence is motivated by hostility based on gender, sexuality, disability, race/ethnicity or religion of the victim</li> <li>▪ the victim is vulnerable</li> <li>▪ the damage or harm caused is deliberate and cannot be described as minor</li> <li>▪ the serious offence forms part of a series of offences</li> <li>▪ informal measures have been ineffective in preventing offending behaviour</li> </ul>	<ul style="list-style-type: none"> <li>▪ the damage or harm caused is at the lower end of the scale and has been put right</li> <li>▪ appropriate action has already been taken under the disciplinary procedure or other informal disposal</li> <li>▪ genuine remorse and apology to victim</li> <li>▪ the behaviour is a symptom of a disorder or illness that cannot be controlled by medication or diet</li> <li>▪ isolated incident or out of character</li> <li>▪ the child or young person is under extreme stress or appears to have been provoked and has over-reacted</li> </ul>

### **Tier 1 Incidents**

#### **Incident Features:**

- Theft (Low Value)
- Minor Criminal Damage
- Minor Disorder

#### **Available Disposals:**

- Behaviour Management Policy
- Internal Resolution
- Restorative Justice\Community resolution
- Preventative Intervention
- Referral to specialist support services

It is an expectation that relatively minor incidents will be addressed by using routine internal policies and procedures, such as the residential unit behaviour management policy.

In addressing and resolving these incidents there must be a consideration and commitment to a restorative outcome which enables the victim to have an opportunity to be heard and to state the impact of the behaviour. It provides an inclusive platform for children and young people to have the opportunity to take responsibility for their actions. There should be an opportunity for the child or young person to express their views in relation to the incident and consider what support can be put in place for the child/young person to avoid this happening again.

### **Tier 2 Incidents**

#### **Incident Features:**

- Violence and assault against staff or other residents without likelihood of repeat or further victimisation.
- Higher Value Criminal Damage
- Theft (Significant Value)
- Possession of controlled drugs

#### **Available Disposals:**

- Consultation with Police SPOC
- Restorative Justice/Community Resolution
- Out of Court Disposal
- Referral to Prevention Services
- Youth Caution/Conditional Caution

Such incidents may include those where no immediate police response is required, for example where assault or damage has occurred and there is no risk of reoccurrence/significant harm to people, or incidents of theft. The children's homes should

follow the internal policies and procedures to notify the appropriate management with responsibility of identifying the appropriate course of action.

In addition, staff within the home should inform the child/young person's social worker at the first opportunity. There should be an opportunity for the child or young person to express their views in relation to the incident and consider what support can be put in place for the child/young person to avoid this happening again.

It is important to consider if it is appropriate to involve the police (please see table 1 for aggravating and mitigating factors which may influence the decision within tier 2). If, following consideration of this, the appropriate manager decides and/or the victim wishes that formal police involvement is necessary, where possible this should be through ongoing liaison with local Neighbourhood Policing Teams and the identified police link Officer. In these instances, it would be appropriate to report the incident to the police via the online reporting system or by contacting 101.

Restorative approaches can range from internal mediation within the children's homes between young people and staff without involving the police, to Community Resolution which does involve the police but does not require a formal criminal sanction.

### **Tier 3 Incidents**

#### **Incident Features:**

- Serious Sexual/Violent Offences
- Offences/Incidents where a firearm or knife have been used
- Immediate serious physical harm
- Significant violent disorder within the home or placement.
- Arson

#### **Available Disposals:**

#### **Immediate Police Investigation**

Incidents requiring an immediate police response where children/young people or staff are at risk of:

- Immediate serious physical harm
- Substantial damage to property, or
- Significant disorder within the home or placement.

In such situations the duty staff should contact the police using the 999 system.

There should be an opportunity for the child or young person to express their views in relation to the incident.



For **all** cases where there is evidence about **harmful** sexual behaviour, Children's Social Care and the Police **must** be informed. They should hold a multi-agency Strategy Discussion within 24 hours of disclosure in relation to the alleged abusing child and the child victim where there is reasonable cause to suspect that the child concerned has experienced or is at risk of Significant Harm. Where the circumstances amount to a criminal offence this **will** be recorded by Lincolnshire Police.

There may be isolated occasions where the behaviour is not thought to be serious enough to warrant further intervention however decisions should not be taken lightly and should be fully supported by assessment and multi-agency decision discussion. The behaviours should be considered symptomatic of un-met need in a child or young person. However, it is important that behaviour of this nature should **always** be reported into Children Social Care so that a record is made and future assessments can take this information into account.

For further information on how to respond to sexually harmful please see the following resources:

Brooke Traffic Light Tool (Hyperlink)

HSB Policy (hyper link)

[The Aim Project – The Aim Project](#)

### **Management of Incidents**

All residential homes and semi-independent living offers should record and respond to incidents in line with their specific policies and procedures in a manner that is proportionate to the seriousness of the incident.

All incidents and recordings classified as tier 1, 2 or 3 should include the views of the child or young person and demonstrate how the principles in Working Together 2018 have been followed.

For the child/young person to expect:

- Vigilance: noticing when things are troubling a child or young person. (If there are concerns re an underlying vulnerability, professionals should consider the possibility of child exploitation)
- Understanding and action: for the child/young person to understand what is happening; to be heard and understood; and to have that understanding acted upon
- Stability: for the child/young person to be able to develop an on-going stable relationship of trust with those helping them
- Respect: to be treated with the expectation that they are competent rather than not
- Information and engagement: to be informed about and involved in procedures, decisions, concerns and plans
- Explanation: to be informed of the outcome of assessments and decisions and reasons when their views have not met with a positive response
- Support: to be provided with support in their own right
- Advocacy: to be provided with advocacy to assist them in putting forward
- Protection: to be protected against all forms of abuse and discrimination and the right to special protection and help if a refugee

## **Lincolnshire Joint Diversionary Panel and Out of Court Disposals**

The Joint Diversionary Panel (JDP) is the agreed decision-making process for all youth offences (except indictable only offences which are managed by Crown Prosecution Service processes) where the young person involved has admitted responsibility. The Panel is a joint Lincolnshire Police/Lincolnshire Children's Services process which seeks to ensure that decisions are informed by a holistic overview of the young person and that young people are not unnecessarily criminalised. This process applies to all young people in Lincolnshire.

Each young person referred is spoken to face-to-face prior to Panel so that their voice can be captured and fed into the decision-making process. This provides an invaluable opportunity to further understand the young person's motivation, intent and emotional state at the time of the offence but also allows the young person to identify strengths, concerns and support networks. If the young person is already open to Future4Me, Early Help or Social Care then the professional they are already working with will gather this information from them. Alongside the young person's voice Panel will also have information regarding previous Police involvement, offence-focussed intervention delivered, social care involvement, ASB involvement, educational updates, CAMHS and Community Paediatrics updates as well as the views of the victim. Having a holistic overview of the young person allows the panel to put the most appropriate intervention in place and maximises the chance of us being able to build desistance from offending.

The Panel has a full range of disposal options available and works in a non-escalatory manner in that outcomes are not dictated by previous disposals which the young person may have received. We have developed a range of bespoke disposals within Lincolnshire and now have the ability to deliver 12-week programmes of offence-focussed intervention under a non-criminalising outcome.

### **The Decision to Prosecute – Crown Prosecution Service**

**Crown Prosecution Service Guidance** - The CPS is committed to ensuring that the special considerations which apply to cases involving children and young people are enshrined in its working practices and form part of the training of its prosecutors.

For more information on key considerations governing the decisions made by the Crown Prosecutors in dealing with children and young people, please go to <https://www.cps.gov.uk/legal-guidance/youth-offenders>

## **Crown Prosecution Service (CPS) 10-point check list for Offences in Children's homes**

The 10-point checklist for offences in Children's homes setting out the required information before a proper decision can be taken on looked after children (this includes all voluntary arrangements, foster placements and secure training centres).

Factors that should be considered include:

1. Disciplinary/ behaviour management policy of the children's home
2. Why have the Police been involved and is it agreed in the policy? There should be an explanation from the home regarding their decision to involve the Police which should refer to the procedures and guidance on police involvement
3. Any informal action / disciplinary action already taken? Information from the Home about the recent behaviour of the child, including similar behaviour and any incidents in the child's life that could have affected their behaviour, any history between the child and the victim, any apology or reparation by the child, history of the incident and any action under the disciplinary policy of the Home.
4. Any apology / reparation? Information from the Home about the recent behaviour of the child, including similar behaviour and any incidents in the child's life that could have affected their behaviour, any history between the child and the victim, any apology or reparation by the child, history of the incident and any action under the disciplinary policy of the Home.
5. Victim's views? The views of the victim, including their willingness to attend court to give evidence and/or participate in a restorative justice or other diversionary programme.
6. The views of the key worker, social worker, counsellor or CAMHS worker on the effect of the criminal justice intervention on the child, particularly where the child suffers from an illness or disorder.
7. Care plan for the child in care? If the child in care wishes it to be considered information, about the local authority's assessment of his / her needs and how the placement provided by the home is intended to address them. The local authority should be able to provide this information as it is an integral part of the care plan for the child.
8. Recent behaviour / incidents regarding the child in care? Information from the home about the recent behaviour of the child, including similar incidents and any incidents in the child's life that could have affected their behaviour, any history between the child and the victim, history of the incident and any action under the disciplinary policy of the home.
9. Information about the incident from the child in care (interview or other)?
10. Aggravating and mitigating factors. Prosecutors should consider all of the aggravating and mitigating features when deciding on the appropriate outcome.

## Appendix One – Flowchart of classification of incidents and what to do

### Flow Chart of Classification of Incidents and What To Do

This flow chart should be read alongside the full protocol

