



Stockport's local agency protocol on reducing unnecessary criminalisation of looked-after children and care leavers.

Implemented May 2020

Introduction

'We have made significant strides in reducing the criminalisation of children and young people¹...This is a credit to the agencies and practitioners involved. However, although the vast majority of looked-after children and care leavers do not get involved with the justice system, they remain over-represented compared to others in the criminal justice system²...This is a challenge we must meet.'

This Stockport **local multi-agency protocol** seeks to reduce the unnecessary criminalisation of Stockport's looked-after children and care leavers.

Implemented in May 2020, to be reviewed bi-annually in May 2022.

This protocol reflects the principles and ambition of the **National Protocol on Reducing Criminalisation of Looked-After Children and Care Leavers**. The national protocol describes 'what' needs to happen across the country. This local protocol compliments this by setting out 'how' the national protocol will be implemented locally, and reflects the local structure of services, care populations, stakeholders, governance and decision-making arrangements.

'A co-developed, whole system approach should be encouraged. This should include prevention (such as addressing cause of adverse childhood experiences and mentoring), early intervention and appropriate response where children and young people do offend.'

This protocol represents a **multi-agency partnership commitment** to reducing the unnecessary criminalisation of looked-after children and care leavers, and includes

¹ Youth Justice Annual Statistics 2016-17 (see Supplementary Tables, Chapter 2, Table 2.1)

² In the year to 31 March 2018, 4% of LAC aged 10 or over looked after for at least 12 months were convicted or subject to youth cautions or youth conditional cautions during the year. Looked after children (who have been looked after for at least 12 months) are five times more likely to offend than all children. (Children-looked-after-in-england-including-adoption-2017-to-2018).

the contribution of relevant local agencies and staff. Although not an exclusive list, this includes: Local Authority Children's Services; Youth Offending Services; Health; Crown Prosecution Service; Police; HMCTS; the local Youth Panel (Magistrates); Care Services (including, kinship, fostering, and local authority and independent sector residential children's homes); Care Leaver services; and any other private or voluntary organisations commissioned to support looked-after children locally.

*'All professionals, including social workers, teachers, police officers, health, foster parents, children's home staff and Youth Justice workers, have a duty to ensure that any special needs presented by looked-after children or those harmed (including communication and interaction, cognition and learning and social, emotional and mental health difficulties) are identified, acknowledged and addressed in the management of the response to the behaviour.'*³

Key principles

Every effort should be made to avoid the unnecessary criminalisation of looked-after children, including through early intervention and prevention services. (See 'Overarching Key Principles section of the National protocol). This is in recognition that many looked-after children have experienced abuse and trauma, affecting their emotional and behavioural development, potentially making them particularly vulnerable to involvement in the criminal justice system, and that criminalisation can be a barrier to successful transition to adulthood and future life prospects.

Inappropriate responses to behaviour which can be perceived as challenging can contribute to the breakdown of placements and can be linked to a drift into criminal and exploitative sub-cultures across the country. This impacts not only the likelihood of placements remaining stable and achieving successful outcomes, but the future of care leavers who are dramatically over-represented in the prison population.

The primary objective is for agencies to work together to prevent and reduce 1) offending and 2) the unnecessary criminalisation of looked-after children, accepting that children's welfare and safety are paramount.

'As a society, we have a responsibility to ensure we protect the children we care for from unnecessary criminalisation and to ask 'would this be good enough for my child?''⁴

It is every professional's responsibility when working with children to strive to understand the underlying causes of a young person's behaviour. Understanding the needs and perspective of the child or young person at the centre of an incident and listening to their voice should be central to all agencies practice and their response to incidents involving looked-after children and care leavers.

³ The National Protocol on Reducing unnecessary criminalisation of looked-after children and care leavers (November 2018)

⁴ The National Protocol on Reducing unnecessary criminalisation of looked-after children and care leavers (November 2018)

Whilst this protocol aims to prevent and reduce offending and avoid criminalisation of looked-after children, victims have a right to be protected from all types of offending. Therefore, where looked-after children do offend, it is important that the rights and needs of victims are given due consideration in any decision making process relating to the offending of children.

*'Victims and communities have a right to be protected from offending and have their needs and interests taken into account in decisions on resolutions to offending.'*⁵

De-escalation and restorative approaches should underpin response to negative behaviour to help avoid the prosecution of looked-after children and care leavers (up to the age of 25) wherever possible. Restorative Justice (RJ) is a process whereby the victim has an opportunity to be heard and state the impact of the behaviour, and the offender has the opportunity to understand the consequences of and take responsibility for their actions. Such RJ approaches can take place informally within the care placement in response to an incident (where police involvement is not required) or as part of a recognised police outcome where it is considered to be appropriate.

This applies to **all** placement types for looked-after children or care leavers.

*'Restorative and diversionary approaches should underpin our response, whether the behaviour occurs in a child's placement or the wider community.'*⁶

Children attracting a custodial sentence or remand are often the most vulnerable with multiple, over-lapping risks and needs. Youth Offending Services (YOS) and Children's Service Departments need to work together to ensure the young person knows exactly where they are going to live prior to release and be prepared accordingly with a robust resettlement plan. Accommodation and on-going support should be known and in place well in advance of their release date.

Prevention

Ensuring looked-after children have the right placements that meet their identified needs will significantly contribute to prevention.

It is important that agencies recognise the vital role of early intervention and prevention in reducing criminalisation of looked-after children and care leavers. Services should co-develop an approach that includes: prevention (such as addressing cause of adverse childhood experiences and mentoring), early intervention and appropriate response where children and young people do offend.

As health is a universal service they are crucial is identifying needs at an early stage and providing preventative and early help work.

⁵ The National Protocol on Reducing unnecessary criminalisation of looked-after children and care leavers (November 2018)

⁶ The National Protocol on Reducing unnecessary criminalisation of looked-after children and care leavers (November 2018)

It is recognised that caring for and managing children and young people with behaviour which can be perceived as difficult or challenging can be an integral feature of work within care placements. There should be a presumption that foster parents, residential staff and carers will generally manage negative behaviour 'in-house'. They should have appropriate training and support to enable them to do so.

*'The police should not be used for low-level behaviour management or matters a reasonable parent would not have called the police over.'*⁷

It is necessary for all incidents within placements to be accurately recorded to provide informed histories of those in care. All incidents must be recorded in the child's personal file. Foster parents, residential staff and carers should bear in mind the potential impact of that record on a child, and recording should be objective and non-stigmatising.

Responding to incidents

As part of co-developing and agreeing local arrangements, all parties should commit to de-escalation and in-house management, developing and agreeing a clear framework for responding to incidents similar to the one shown in Annex 4: Deciding on how to respond to an incident of the national protocol (see below.) The voice of the child should be central to this.

In circumstances where an offence/incident does not pose any immediate safety risk (and where victim/s indicate that they do not wish to make statements in support of potential charge/prosecution) then such incidents should be recorded and managed internally, without the need to involve the police.

It should be recognised that each individual case should be assessed with a regard to whether or not there is an immediate risk to personal safety, being mindful that arrest and subsequent contact with the criminal justice system brings its own risks for children.

If the decision to call the police is made, then, upon the arrival of the police at the scene, a joint view (police and carer) should inform whether arrest is necessary and proportionate. Where arrest is considered necessary there should be a presumption to interview children in voluntary reporting suites, outside of police custody, wherever possible.

Where a crime has been committed, this will be recorded by the police. The decision regarding the outcome for the young person should be made jointly between the police and Youth Offending Service for informed consideration of out of court disposal options. (Where children placed out of area are involved, these arrangements should include their responsible authority.)

'In circumstances where informal, community resolution is inappropriate, police should, as a matter of routine, consider diversion from criminalisation/prosecution

⁷ The National Protocol on Reducing unnecessary criminalisation of looked-after children and care leavers (November 2018)

*through discussion in local joint decision-making forums. The forum should consider if using a more substantial restorative intervention, potentially involving other agencies, is suitable*⁸

The specific approaches that have been developed as alternatives to prosecution for use after an offence has been detected. Stockport Youth Offending Service holds a weekly multi-agency panel designed to consider and provide informed decision-making, based on various child records, on the most suitable case disposal. The panel has regard to the best interests of both children and victims of crime, with a view to protecting potentially vulnerable children and obligation to protect the public.

In some circumstances where more serious offending has occurred the police will lead the investigation, and the preservation of evidence may be necessary in order to secure evidence as part of the investigation.

Where there is an immediate risk to personal safety

Police should be called to incidents where there is an unacceptable and unmanageable level of risk to personal safety and where it is deemed highly unlikely that order will be restored without police assistance. Immediate police response will be required for incidents of serious violence or serious dangerous disorder where children, residential staff, foster parents or carers are at risk of immediate serious physical harm. In such situations, carers/placement providers should contact the police via the 999 system.

Support to reduce offending for those who do enter the criminal justice system

Despite all agencies best efforts, there will be instances where looked-after children and care leavers have to enter the criminal justice system. As per the National Protocol, where this does happen, it should be underpinned by the following principles:

If a looked after child is charged with an offence:

- When a child in care is charged with an offence, it is important that they are not disadvantaged because of their looked-after status. Local authorities should therefore ensure there are viable alternatives to a child being remanded to a secure establishment.
- The home authority must ensure that the young person is:
- Legally represented by a solicitor with expertise in youth justice.
- Supported to understand what is happening to them.

⁸ The National Protocol on Reducing unnecessary criminalisation of looked-after children and care leavers (November 2018)

- It is good practice for the child's social worker to attend court with them, particularly on the day of sentence, to ensure that the child's best interests are represented and that custody is used only as a last resort.
- If the child has an ICTA, they should be advised and be able to attend court to further support the child.
- All local agencies/protocol partners should sign up and adhere to the Concordat on children in custody and seek to avoid holding looked-after children overnight in police cells where possible.
- If a looked-after child receives a community sentence, their social worker and YOS case manager should continue to work closely together, share information and clarify their roles and responsibilities to ensure the child receives the support they need.
- If a custodial sentence is likely, the YOS worker and the child's social worker should work together to prepare the child, explaining what will happen and how they will be supported. The social worker should feed in any relevant information to the YOS ahead of them preparing the pre-sentence report.

Working together

All agencies (including children's social care, Youth Offending Services, the Crown Prosecution Service, Police, HMCTS, the local Youth Panel (Magistrates), all types of care settings, Care Leaver services, and any other private or voluntary organisations, commissioned to support looked-after children locally), working together is key to delivering shared objectives in reducing offending by looked-after children and care leavers and protecting the public.

This includes, kinship, fostering and residential children's homes.

Governance

Stockport Family Partnership Board provides the overall governance for children in Stockport. Below this there are four main Boards; namely the YOS Partnership Board, ILAC Board, Corporate Parent Working Group and the Safeguarding Board. These Boards provide governance to ensure implementation, monitoring, evaluation and compliance with local arrangements. They also assist with over-coming any barriers to effective multi-agency working.

Stockport also have a Provider Forum that meets quarterly with external fostering and residential provisions for Looked After Children and Care Leavers. This provides an opportunity to share advice, information and learning to improve support and services for children.

Strategic Planning

The Children's and Young People Plan provides the overarching priorities for children and young people in Stockport.

The Youth Justice Plan and the Looked After Children & Care Leavers Plan provides the detail around delivering the priorities for reducing First Time Entrants, Re-offending and Custody.

Progress on these plans are reported to the Partnership Boards as outlined above.

The needs of carers

Ensuring the needs of carers is vital to ensuring that young people in their care are adequately cared for and their needs addressed. Foster carers have a supervising Social Worker to provide regular supervision and to support the placement. In order to support carers there needs to be good working relationships between the agencies which either have statutory responsibility, or are involved to support the young person such as social care, leaving care, YOS, preventative services, education and health providers (including mental health.) Particularly where carers are caring with young people displaying risky behaviour they will need additional support. A lack of support can result in carers who experience loss and/or harm as a result of incidents feeling powerless. Frightening or abusive incidents can also significantly impact upon their wellbeing and ability to further care for the child. Such circumstances are potentially unhealthy for all involved and may leave affected carers feeling that their needs can only be met through pursuit of formal justice. We know that this is never in the best interests of children but we must meet our obligations to address the needs of those who care for them.

Providers have insurance in place to cover property damage. There is also a process in which Foster carers can go through the Local Authority to claim for damage (dependent upon the circumstances.) For personal loss and/or harm any provider would be able to access support through the relevant professionals involved, Victim Support Services and the Police, where necessary. It is the responsibility of the Manager of the residential home to ensure that their staff are adequately trained to deal with challenging behaviour and the correct safeguards are in place to provide supervision and support. Additional access to training provided by Stockport Safeguarding unit.

Looked-after children who go missing

Stockport has a dedicated Missing From Home (MFH) Team based within the Multi Agency Safeguarding and Support Hub (MASSH). It is the primary responsibility of the MFH Team to offer support to young people who have been reported missing from home and care.

It is strongly recognised that when a young person goes missing that their risk of criminality increases and therefore there is much emphasis on reducing and/or stopping missing from home/care episodes.

First and foremost is ensuring that children's placements are resourced effectively to be able to proactively respond when a child in their care does not return home.

Every Stockport child is offered an independent return home interview, this explores issues relating to the missing episode including peer associates, hot spots areas, any crimes that occurred and/or any safeguarding issues.

For children who repeatedly go missing or have extended periods away from placement are discussed at Stockport's Staying Safe Panel. This is a multi-agency panel represented by the children social worker, health, education welfare, virtual school team, youth offending service and drug and alcohol services. The aim of the staying safe panel is to ensure that there is an agreed threshold of risk and plan in place to keep the child safe, this includes how to reduce risk of offending / increased offending.

Information sharing

It is vital agencies develop an environment of information sharing that demonstrates to young people that agencies work together and keep each other informed of developments in order to serve children's best interests. The Data Protection Act (2018) allows that any practitioner can share relevant personal information about a child lawfully if it is to keep a child safe from harm, or to protect their physical, mental and emotional wellbeing. All practitioners should aim to gain consent to share information but should be mindful of situations where to do so would place a child at increased risk of harm. Information may be shared without consent if a practitioner has reason to believe that there is good reason to do so, and that sharing the information will enhance the safeguarding of a child in a timely manner.

In addition to the statutory guidance applying to agencies working with children, the key legal concepts, legislation and terminology relevant to information sharing are contained in:

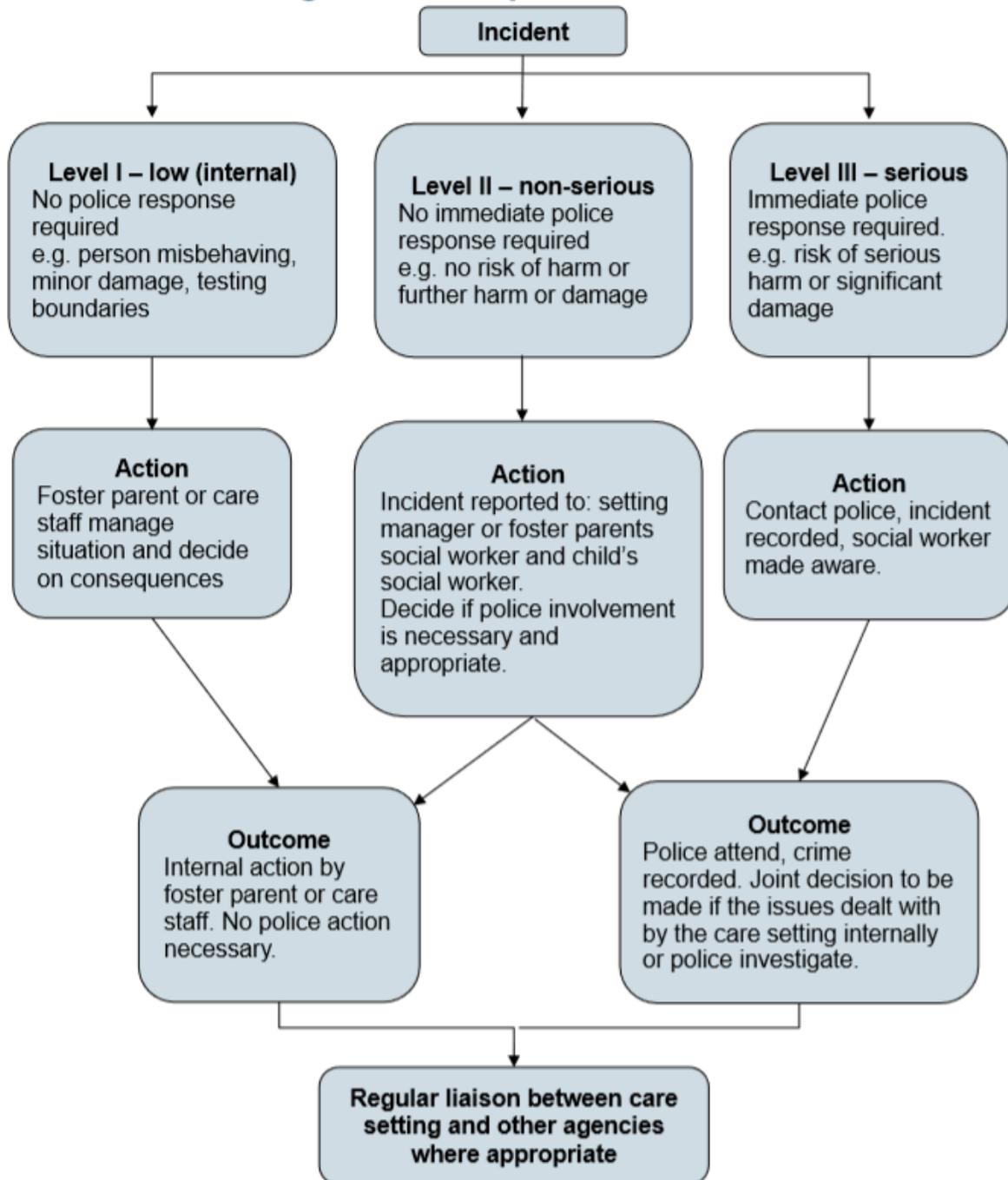
- The Data Protection Act 2018
- The Human Rights Act 1998
- The common law duty of confidence
- The information that could be shared between agencies for contextual safeguarding may include the following: Children and young people (both UK and foreign nationals) at risk of being sexually exploited (including regular updating of any CSE assessments), coerced in to criminal activity, or trafficked.
- Children and young people believed to be criminally active.
- Children and young people identified as criminally active being monitored including recording their clothing, times in and out of the homes and any property appearing without formal recognition or identification.
- Areas identified as used by drug dealers in the locality of their placement.

- Sex offenders living in or near placements if relevant (including notification by police as part of information regularly provided to inform children's home Location Review Risk Assessments).
- Grooming activity in the location.
- Gang activity in the location.

Crown Prosecution Service (CPS) response

This policy is implemented in conjunction with the CPS guidance on decisions to prosecute looked-after children. This should be read in conjunction with *Offending Behaviour in Children's Homes – Crown Prosecution Service Guidance Youth Offenders*, the basic principles of which can be applied to all placements. See Appendix 2 below.

Annex 4: Deciding how to respond to an incident⁴²



⁴² Adapted, with permission, from the Pan Dorset Protocol To Reduce Criminalisation of Children and Young People in Care

Appendix 2: Crown Prosecution Service 10 point plan:

<https://yjlc.uk/the-forgotten-10-point-checklist-the-decision-to-prosecute-offending-in-childrens-homes/>

Details

The 10 Point Checklist requires a systematic approach to the decision to prosecute a Looked After Child (LAC) who offends in Children's Homes. The decision-maker is required to ask the following questions:

- What is the Disciplinary Policy of the Children Home?
- Why the Police have been involved and is it as agreed in the Policy?
- Has any informal / disciplinary action already been taken?
- Has there been an apology or reparation?
- What are the Victim's views?
- What are the Social Worker's views?
- What is the Care Plan for the Looked After Child?
- What is said of the recent behaviour of the Looked After Child?
- Are there any aggravating or mitigating features?

Failure to follow this guidance could result in proceedings for judicial review – see CPS Legal Guidance on Young Offenders (Offending Behaviour in Children's Homes – Decision to Prosecute).

Date issued: 1st May 2020

Date for next Review: May 2022 or at point of significant change to operating procedures

Local version approved by: (on behalf of the LAC Partnership Board)



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