

Derbyshire Joint Agency Protocol Regarding Offending by Children in Care

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Derbyshire Joint Agency Protocol Regarding Offending by Children in Care

This protocol is intended to assist social care staff (primarily in residential children's homes), the police, the Crown Prosecution Service (CPS) and the Youth Offending Service (YOS), in determining a proportionate and appropriate response to offending behaviour by children in care, in terms of staff response and the need for police involvement and/or court action. Children in care formerly known as 'Looked After' may be accommodated in residential homes or foster homes.

This protocol has been agreed with the local police force and provides guidance on police involvement with the home to reduce unnecessary police involvement in managing behaviours.

Children and young people should not be charged with offences resulting from behaviour within a children's home that would not similarly lead to police involvement if it occurred in a family home.

All agencies are committed to working together, to reduce offending and unnecessary criminalisation of children and young people in care.

This protocol as a whole does not cover

- Children / Young people reported missing from the home. (see separate protocols re young people missing)
- Children in Care in Private / Independent Children's Homes.
- Children in Care in Derby City

However in relation to the Police and CPS the protocol is operational. Sections i.e. 6, 7, 8 & 10.

1. Aims and Purpose

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

- Strike a balance between the rights and needs of children and young people in residential children's homes / foster homes, social care staff and the local authority.
- Support and develop clear processes for addressing offending incidents in children's 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 the local police.

- Reinforce and extend the multi-agency links and commitment to reduce offending by children in care in Derbyshire.
- Strengthen the use of alternative approaches in social care settings including the use of restorative practice in resolving conflict.

2. Additional Guidance

Additional information pertaining to the protocol can be found at:

- Derbyshire Children and Younger Adults Procedures Manual (Children's Homes) The Guide to the Children's Homes Regulations including the Quality Standards (April 2015)
- The Code for Crown Prosecutors www.cps.gov.uk
- CPS to www.cps.gov.uk/legal/v_to_z/youth_offenders/index.html#a09

The first two documents above establish standards of care within residential care homes. The CPS guidance is to assist prosecutors in determining where the public interest lies, when it is alleged that a child in care has committed an offence in a children's home. It may in some instances be applied to some offences committed in the community.

This protocol should be applied alongside specific policy and guidance applicable to each agency.

- Police officers will find further information through the constabulary's intranet. Police involvement will be in line with the National Crime Recording Standards (NCRS).
- Residential care staff should refer to Derbyshire's Tri.x online Children and Younger Adults (CAYA) Procedures Manual (Children's Homes) Guidance for staff in Children's Residential Homes.
- Foster carers should refer to the Foster Carers' handbook.

3. Requirement for Police Involvement

It is recognised that caring for and managing young people with difficult or challenging behaviour is an integral feature of work within care placements. Staff and carers will generally manage problematic situations except where they are so severe that police involvement is essential in order to avoid physical assault or excessive damage. Foster carers have guidance on dealing with problem behaviour. As foster carers are working alone, there maybe a lower threshold for calling the police to assist in managing incidents.

Staff and carers need to consider the nature and seriousness of the incident before deciding whether to involve the police immediately, at a later stage, or whether to involve them at all.

**Before residential staff contact the police, they should refer to the interagency flow chart, to aid decision making regarding incidents.
See Appendix B.**

The incident should be reported to the Home Manager who has the responsibility of identifying the appropriate course of action or if they are not available discuss with DCC *Rapid Response Team*. In addition staff within the home should inform the young person's social worker at the first opportunity.

Wherever possible and safe to do so a 24 hour cooling off period should be allowed before contacting the police for internal and no immediate response categories.

Three categories of police response are considered:

- Internal resolution
- No immediate police response required, but police input helpful.
- Immediate police response required

a) Internal Resolution

Derbyshire County Council (DCC) children's homes have internal policies to deal with inappropriate behaviour that may constitute an offence. That is, the kind of behaviour that would generally be dealt with by a parent or carer in a home situation. Staff will apply a '*Reasonable Parent Test*', that is; 'If the incident happened in a supportive caring family environment would a reasonable parent involve the police?'

Where a decision has been taken **not** to involve the police, it is important that those incidents and their underlying causes are properly addressed using existing Children and Younger Adults (CAYA) policies and procedures including treating each child with understanding, dignity, kindness and respect, building and preserving positive relationships between each child and the adults caring for them. To have an understanding of each child's behaviour to allow their needs, aspirations, experiences and strengths to be recognised and their quality of life enhanced. Involving children and relevant others wherever practical in behaviour management in order to support each child to balance safety from injury (harm) with making appropriate choices, making sure that the child's rights are upheld. This would also include PROACTSCIP® (Positive Range of Options to Avoid Crisis and use Therapy Strategies for Crisis Intervention and Prevention), and/or any sanctions used for poor behaviour that should be restorative in nature to children in order that they are able to recognise the impact of their behaviour on themselves, other children, the staff caring for them and the wider community.

b) No immediate police response required, but police input helpful

If after consideration of the circumstances and the wishes of any victim have been determined, a decision has been taken to report the incident to the police, contact should be made via the main call centre number 101.

It is important to avoid any unnecessary reporting of incidents to the police. In taking this decision, the carer/member of staff and their manager should have regard for the

wider casework implications of involving the police and the need for a considered and measured response that reflects the principles of good parenting.

In certain circumstances, preservation of evidence may be an issue. Staff and carers will need to ensure that reasonable steps are taken to retain articles relevant to any criminal allegations or police investigations. In cases of doubt the police should be consulted immediately. If the liaison officer is not available it may be most effective to ask for 'advice and assistance' from the Duty Sergeant.

The timing of the police response will vary according to the incident grading system of the Derbyshire Constabulary. This is based upon the information given by the caller and the proposed course of action will be made known at the time of the call.

c) Immediate Police Response Required

Incidents of violence or serious disorder requiring an urgent police response where children, staff or carers **are at risk of immediate serious physical harm should be reported immediately**. In such situations, the senior member of staff on duty/shift coordinator should contact the police, either via the main call centre number 101 or the 999 system in cases of emergency.

Some offences, such as rape, firearms offences, or offences which are likely to lead to serious injury, serious harm to public order or serious financial loss will always be treated as serious and will always be reported to the police. In addition, any incident which, in the view of the young person or member of staff has led, was intended to lead or was likely to lead to serious loss or harm to any person, should be treated as a serious incident.

4. Offence Guidance

For Residential Children's Homes this is detailed in The Protection of Children Standard (Regulation 12) in relation to control, discipline and restraint and behavior management (Regulation 35) which requires each home to prepare and implement a behavior management policy describing the homes approach to promoting positive behavior and the measures of control, discipline and restraint which may be used in the home. These measures should be set in the context of building positive relationships with children and young people

The following identifies offences, which the police would consider to be most frequently committed by young people. This information will enable recognition of those offences, which are often best dealt with by the homes' procedures. This will mean that the matter will be dealt with more swiftly, is often more appropriate and will not lead to the young person being criminalised unnecessarily.

Common causes for police contact may include:-

- Violence by a child or young person on another
- Violence to staff by a child or young person
- Criminal damage

- Theft within the home
- Disorder in or around the home
- Discriminatory or racially aggravated behaviour, e.g. assault, harassment, damage, verbal abuse
- Substance misuse
- Possession / use of weapons

It is important to see such 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. 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 offender
- 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)
- Requirement for formal investigation (e.g. insurance claim)

Recording of Incidents in Children's Homes

Record accurately the incident on the correct forms, this will be dependent upon the incident which has occurred & may include any or all of the following:

- Ofsted Notification Forms and Serious Incident Report Forms
- Assault Report Form
- Dangerous Occurrence Form

5. Restorative Responses

Restorative options allow the behaviour of the young person to be addressed and for them to be held accountable for their actions, whilst maintaining and developing relationships. A restorative ethos in the home helps to develop a positive atmosphere and to build stronger relationships between everyone in the home.

For those incidents that can be resolved without the recourse to police involvement, restorative responses will ensure that the young person will be encouraged to take responsibility for their actions, understand the harm caused and make reparation for the harm caused. Involvement in restorative activity can be an alternative to police involvement or should the offence be serious enough to require police involvement can be used additionally as an intervention prior to or during sentence. The focus of restorative intervention should be to make good the harm caused and identify strategies to avoid a repetition of this behaviour in the future.

The participation of the victim, staff, carer, other young person or member of the community, should be voluntary and their wishes should be ascertained.

Forms of incident specific restorative intervention which can be used include: Restorative conversations/chat; Reparation direct or indirect; Mediation direct or indirect; Restorative conferences (CAYA aim to run all Serious Incident meetings restoratively).

Reparative activities will be identified by the young person, victim and those involved in the incident/offence. Commitment to and completion of these activities, which could include an apology, will be the responsibility of the young person and the home manager / foster carer.

Staff training and on-going support will ensure that all staff are confident in using restorative responses as an alternative to police involvement. Local Police Safer Neighbourhood Officers, Police Community Support Officers (PCSOs), YOS and Children and Younger Adults staff will support this approach.

6. Charging and Disposals Available to the Police Officer

For children in care, custody and section sergeants will take into account the need to gather further information as per the CPS 10 point check list when making charging decisions, even in cases of admitted guilt. See Appendix A.

This is especially relevant when considering Out of Court disposals as the CPS may not be involved in those decisions.

In dealing with any offence committed by a young person under the age of 18, the police have a range of options:

- No further action (NFA)
- Community resolution (which includes Restorative Justice disposals)
- Youth Caution (caution)
- Youth Conditional Caution (conditional caution or YCC)
- Charge

Non-recordable offences

No change to policy, fixed penalty notices can be issued on the street without the involvement of an appropriate adult. No limit on the number that can be issued.

Youth Restorative Disposal (YRD)

Youth Restorative Disposals were designed by the Youth Justice Board, the Ministry of Justice and ACPO for young people aged between 10 and 17 for first time, minor offences.

The YRD holds 10 to 17 year-olds to account for minor crime and disorder through the use of restorative justice. Restorative justice principles allow the victim to take an active role in the way an offender is dealt with and help them understand how they became a victim of crime. Typically, a police officer trained for the YRD will act 'on the spot' where circumstances allow.

The principle of YRD is to prevent a young person from being drawn into the Criminal Justice System unnecessarily, which is costly in time and resources and may not be the best way to deal with a young person who commits a low-level crime as their first offence.

Young offenders can receive a maximum of two YRDs, but the second one must be authorised by an inspector. *Further guidance on the operation of professional judgment is available on the constabulary intranet.*

Youth Caution (YC)

The Youth Caution is a formal Out of Court Disposal which replaces the preceding Final Warning Scheme. **A Youth Caution may be given for any offence when the young person admits an offence, there is sufficient evidence for a realistic prospect of conviction but it is not in the public interest to prosecute.**

For any Youth Caution the YOT must be consulted. The most appropriate disposal in individual cases is agreed at the fortnightly YOT/ police, Youth Justice Panel. The YOT will assess the young person and put in place a rehabilitation programme to prevent further offending where it is appropriate. The interventions attached to a youth caution are voluntary and there is no separate penalty for failing to comply with them, however failing to comply with this intervention can be cited in any future criminal proceedings.

Youth Conditional Caution (YCC)

The Youth Conditional Caution is a formal Out of Court Disposal, but with compulsory assessment and intervention attached to it. **A YCC may be offered when a young person admits an offence, there is sufficient evidence for a realistic prospect of conviction and when the public interest can best be served by the young person complying with suitable conditions rather than a prosecution.**

The YOT must assess the young person and advise on appropriate conditions. The young person must also agree to accept the YCC and the conditions attached. Police should not agree conditions which are to be delivered by the YOT without the YOT's prior agreement. The conditions attached to the YCC can be reparative, rehabilitative or punitive in nature. The YOT are responsible for monitoring conditions and advising on non-compliance.

The offences for which the YCC is an available disposal are summary (non-motoring) offences and some either way offences (e.g. theft, criminal damage and simple possession of drugs). The offences for which a YCC cannot be given are still to be determined by Ministers, but are likely to be specific offences such as those involving knives, domestic violence and serious sexual assaults.

There are a number of options for using a restorative process in the delivery of an out of court disposal including:

An informal restorative meeting with the victim and offender to identify the impact of the offence and work together to come to a resolution.

Formal restorative justice meeting (conference) which involves the young person, their parents/guardians, the victim and the victim's family or supporters and can involve whole communities if the offence is a community issue.

Shuttle mediation

Use of a victim impact awareness statement to inform victim work

Production of a letter of explanation or apology.

Delivery of a restorative process alongside a caution makes the young person confront the consequences of his/her offence and give the victim a voice and a stake in resolving the offence. The impact of an out of court disposal on a young person can be enhanced by delivering a restorative intervention alongside it.

Any out of court disposal should have a foundation of solid and accountable decision making to ensure transparency of the process and consistency of application. It is vital that all decisions and importantly the rationale behind them are recorded, within the custody record and within the YOT file.

Previous Formal Disposals

Section 136 of the LASPO Act permits the use of out of court disposals where previous formal disposals have been given. These previous disposals must be considered in any further disposal decisions. When considering an informal disposal such as Community Resolution the number of previous informal and formal disposals given should also be considered, to help determine whether that is the most appropriate course of action.

Fixed penalty notices.

Recordable offences (offences that must be recorded as a crime under NCRS rules).

Chief Constable's order 04/09 removed the requirement for a person aged **16-17** years to be arrested before they could be issued a fixed penalty notice, although an appropriate adult must be present if the offence is recordable. Those under the age of 18 years can only receive one notice, check PNC first.

7. Police Liaison

The Police will appoint a liaison officer to each children's home. The officer will normally be from the local Safer Neighbourhood Team or be a Youth Involvement officer. Duties of these officers are not prescribed, but should include:

- Be a single point of contact for non-urgent enquiries from the children's home
- Assist staff to resolve internal problems without the need for formal complaints to be reported
- Help to promote a good relationship between the home and the local community
- Represent the interests and views of the staff and children to other officers
- Promote informed and consistent responses in dealing with any matters that are reported to the police

Regular, preferably monthly meetings with the home manager should aid the development of good working relationships and promote the outcomes outlined above.

Children's Homes Managers and Section Inspectors should develop a working relationship in order to deal effectively and speedily with any general issues of concern.

Foster carers approved to care for more challenging children would benefit from developing a relationship with the local safer neighbourhood team, so that they can offer support and advice in prevention of offending behaviour.

8. Crown Prosecution Service (CPS) and Prosecution

The CPS is responsible for prosecuting criminal cases investigated by the police in England and Wales. In undertaking this role, the CPS:

- Advises the police on cases for possible prosecution
- Reviews cases submitted by the police for prosecution
- Where the decision is to prosecute, determines the charge in all but minor cases
- Prepares and presents cases for court

A criminal justice disposal, whether a prosecution, youth caution or youth conditional caution, should not be regarded as an automatic response to offending behaviour by a looked after child, irrespective of their criminal history. This applies equally to persistent offenders and youths of good character. A criminal justice disposal will only be appropriate where it is clearly required

CPS policy recognises that children/young people in residential care are at high risk of offending behaviour due to a number of factors:

- Many children in care are between the ages of 14 and 17 years, which is regarded as the peak offending age range.

- In some children's homes they are likely to be living with young people who have been remanded to local authority accommodation, and may be susceptible to group offending behaviour.
- They may be living in accommodation far from their home, so may lack support from friends and family.
- Many looked after children display challenging behaviour, which may be a reaction to past experiences of abuse and neglect; and/ or have been diagnosed as experiencing Attention Deficit and Hyperactivity Disorder and Oppositional Defiant Disorder. Their offending behaviour may be caused by or otherwise linked with the disorder.
- Their behaviour is likely to be more challenging and demanding because of their family experience, the breakdown of foster placements and frequent moves from other children's homes.
- Living in a group with other challenging and demanding children of the same age gives rise to greater potential for conflict, bullying and peer group pressure.
- The police are more likely to be called to a children's home than a domestic setting to deal with an incident of offending behaviour.

The Police, Crown Prosecution Service and Children's Homes are working together to ensure that the combined response to offending behaviour is proportionate and effective in dealing with the behaviour and the victim and young person's needs. ***As a result a 10 Point Checklist of information is being applied by the Police and CPS when making a decision to charge a child in care with an offence. See Appendix A.*** The homes play a large part in the provision of this information and recognise the value of this information in the decision making process and the timescales that the Police and CPS are working too.

If a case is referred to the CPS for a charging decision by the Police or if a young person has already been charged with an offence arising out of a care home environment, the CPS will require the following information also contained in the 10 Point Check List from the Police/Local Authority/Children's Home in order to complete a full review of the case in accordance with the Code for Crown Prosecutors:

- The disciplinary policy and behaviour management policy of the Home.
- An explanation from the home regarding their decision to involve the Police, which should refer to the procedures and guidance on Police involvement.
- Information from the Home about the recent behaviour of the young person, including similar behaviour and any incidents in the young person's life that could have affected their behaviour. Any history between the young person and the victim, any apology or reparation by the young person. Any action under the disciplinary policy of the Home.

- The views of the victim, including, willingness to attend Court to give evidence and/or participate in mediation or other diversionary programme.
- The views of the key worker/social worker/counsellor/CAMHS worker on the effect of criminal justice intervention on the young person, particularly where the young person suffers from an illness or disorder.
- Any explanation or information from the young person in care.
- Details of the young person's Care Plan and Risk Management Plan.

Crown Prosecutors when reviewing such cases will take in to account that children's homes may be able to provide further information relevant to the case even after the decision to charge /divert has been made.

9. Monitoring the Protocol

To evaluate the implementation and working of this protocol, the local police and home managers and CPS should be aware of its impact, in respect of children's homes, in particular:

- The number of incidents dealt with internally
- The number of incidents dealt with jointly with the police resulting in a formal disposal
- The number of incidents dealt with jointly with the police resulting in an informal disposal
- The number of cases discontinued by the CPS

The protocol will be reviewed annually.

10. Appendix A

Derbyshire Joint Agency Protocol Regarding Offending by Children in Care

Crown Prosecution Service 10 Point Checklist For Offences in Children's Homes

1	Disciplinary Policy of Children's Home <i>Copies of the behaviour management policy and the 'joint agency protocol regarding offending by children in care' are available on request.</i>
2	Why have the police been involved and is it agreed in the policy?
3	Any informal action / disciplinary action already taken?
4	Any apology / reparation?
5	Victim's views <i>Willingness to attend court, engage in a restorative intervention?</i>
6	Social worker's views <i>The views of the key worker, social worker, YOT or CAHMS workers involved with the young person on the effect of potential criminal justice system intervention.</i>
7	Care Plan for Child in Care <i>What is the plan regarding their placement? Is it permanent / long term? What additional support does the young person receive eg education, CAMHS, YOT?</i>
8	Recent behaviour / incidents re child in care <i>Including those of a similar nature, historical relationship between young person and victim, setting the offence into context.</i>
9	Information about incident from child in care (interview or other) <i>Will be gathered from police interview.</i>
10	Aggravating or mitigating factors <i>CPS / Police to complete this section.</i>

11. Appendix B

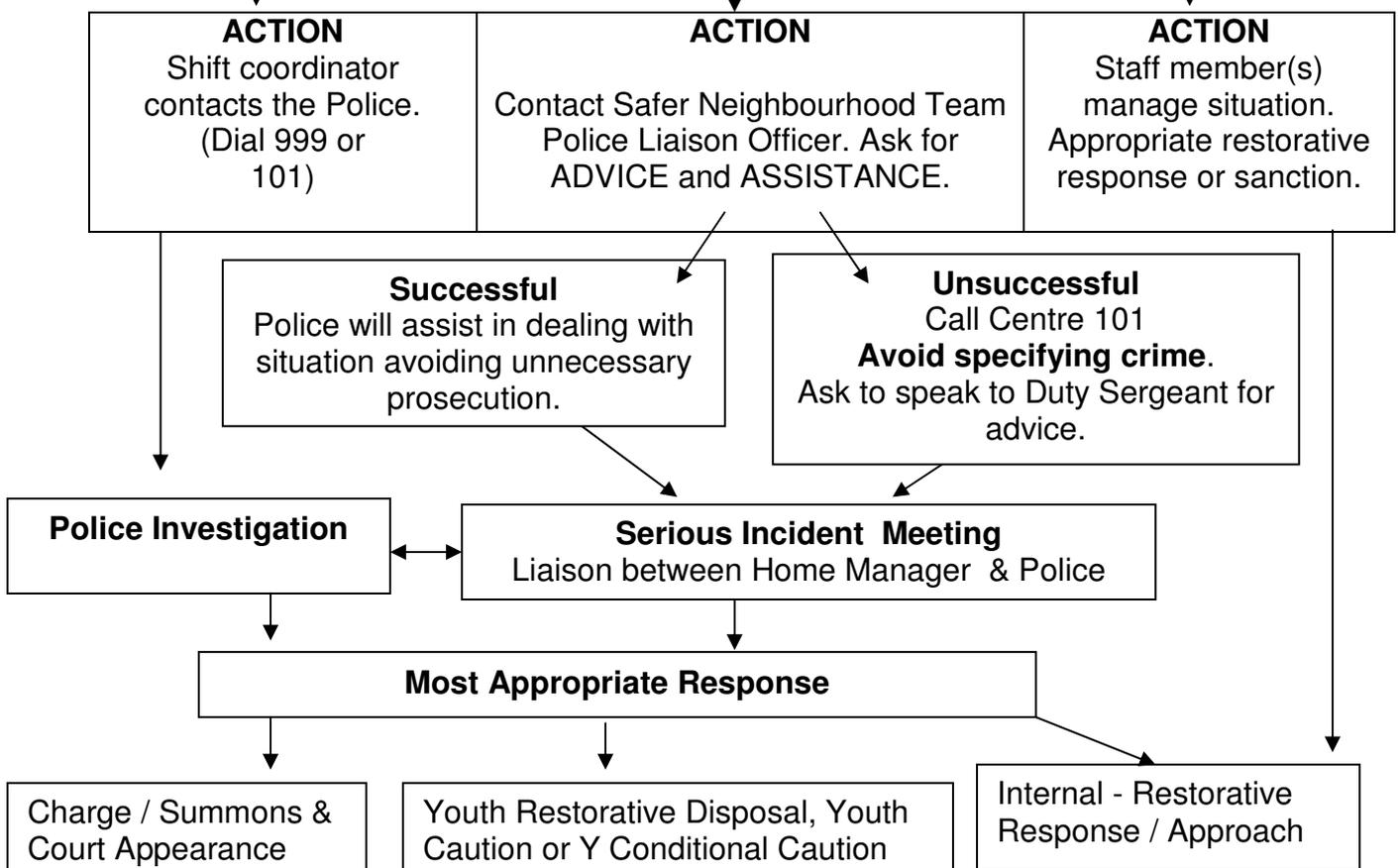
POLICE INVOLVEMENT IN RESIDENTIAL CARE INCIDENTS

This protocol must be followed when any member of staff is considering contacting the Police.

INCIDENT occurs that could be a criminal offence

Residential Children's Worker discusses incident with Registered Manger or Rapid Response Team and decides whether the matter can be dealt with internally, by the local Safer Neighbourhood Team / Police Liaison or requires an urgent police response.

URGENT POLICE RESPONSE REQUIRED	NO IMMEDIATE POLICE RESPONSE REQUIRED Contact Police Liaison / Safer Neighbourhood Team	INTERNAL No Police Involvement Required
Example Young person or staff at risk of immediate serious physical harm due to assault, or serious damage.	Example Situation already calmed down. No risk of harm / further harm to anyone Minor assaults. Theft. Damage. Minor drugs offences. Minor incidents within the community.	Example Young person misbehaving/ abusive/ refusing to accept staff requests/refusing to go to bed. Minor damage.



SIGNATORIES

Agency	Title	Name	Signature	Date
D.C.C. Children & Younger Adults	Head of Children In Care Provision	Mary Wilton		
Derbyshire Constabulary	Superintendent Head of Criminal Justice	Paul Callum		
Crown Prosecution Service	Chief Crown Prosecutor	Steve Chappell		
D.C.C. Children & Younger Adults Youth Offending Service	Head of Service	Dave Bond		