

Wakefield District protocol to reduce offending and criminalisation of Looked After children in our care

The Challenge

Looked after Children continue to be significantly over represented in the youth justice system relative to their non-looked after peers. Work to date across the south-east has established that published figures on offending by Looked after Children are unreliable and the extent of their over-representation is likely to be significantly higher than the reported 'two to three times more likely to offend' than non-looked after peers. We also know that Looked after Children are significantly over represented in the custodial system with surveys of prisoners and those in secure youth settings indicating that at least one quarter of all those incarcerated have spent some time in local authority care in their childhood.

So, the challenge is two-fold. First, it is incumbent upon us to recognise the pre-existing risk factors that place Looked after Children 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.

The HMI Probation, Ofsted and Estyn report and the recent Justice Committee report concluded that the youth justice system is currently failing children in care and care leavers. Both have recommendations for changes in practice to ensure more and better support and improved collaboration to prevent the unnecessary criminalisation of these vulnerable young people.

Further reductions in Looked after Children offending will only be achieved through improved joint working between all agencies and local authorities across the whole region. The regional protocol is designed to provide an overarching set of principles to inform the processes that will ensure Looked after Children are kept out of the criminal justice system wherever possible and that those who do enter the criminal justice system are provided with services that are most likely to reduce re-offending. Although this is a District protocol, the aspiration is that it will apply to all children including incoming children from areas outside of Wakefield, and that in time the protocol will apply nationwide.

Introduction

This joint protocol is designed to provide a framework for best practice for Police involvement in Local Authority Children's Homes. Its aim is to standardise our approach to dealing with incidents which arise within Children's Homes in Wakefield and to provide guidance as to what is expected of Children's homes staff and police officers.

The fact that staff report an incident does not mean that the police will follow pre-decided action. Or in some cases any action at all. Wherever possible, as defined in the protocol the action taken will be determined following discussions by all concerned including wherever possible. Protocol guidance view page 8.

It is anticipated that the principles contained within the protocol will act as a framework for ensuring best practice in dealing with Looked after Children across the region. The protocol aims to strike a balance between the rights and needs of the children and young people, the rights of staff and foster carers and members of the public (where offending is outside of the care setting itself) and the decision to involve the police and/or Crown Prosecution Service.

The protocol aims to reduce the prosecution of Looked after Children wherever possible, by encouraging the use of restorative justice (RJ) approaches. RJ is a process whereby the victim has an opportunity to be heard and to state the impact of the behaviour and the offender has the opportunity to take responsibility for his or her actions. Approaches can range from internal mediation within children's homes between young people and staff without involving the police, to informal resolution such as community resolution which does involve the police, to more intensive restorative work facilitated by specialist restorative practitioners.

Key principles

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

If a young person is arrested and the police do not pursue the case, this is known as taking 'no further action'. It is an acknowledgement that no action is appropriate or warranted in a particular case. This could arise if there is no substantive offence or if the young person makes no admission and there is insufficient independent evidence to charge them.

Community resolution

Community resolution is the nationally recognised term for the resolution of a minor offence or anti-social behaviour incident through informal agreement between the parties involved, as opposed to progression through the traditional criminal justice process.

Community resolution is a tool to enable the police to make decisions about how to deal more proportionately with low-level crime and is primarily aimed at first-time offenders where there has been an admission of guilt, and where the victim's views have been taken into account. Community resolution enables police officers to use their professional judgement to assess an offence, taking into account the wishes of the victim and the offender's history in order to reach an outcome which best meets the needs of the victim and of the public.

Community resolution may be delivered either with or without the use of restorative justice techniques. All community resolutions must be recorded on local systems and can be disclosed as police information if relevant to an enhanced criminal records bureau check.

Youth Caution

The Youth Caution is a formal out-of-court disposal which replaces the Final Warning Scheme. A Youth Caution may be given for any offence when the young person admits the offence and there is sufficient evidence for a realistic prospect of conviction, but it is not in the public interest to prosecute.

The police must notify the YOT when a Youth Caution is given. Following a second or subsequent Youth Caution, the YOT must assess the young person and put in place a rehabilitation programme to prevent further offending, where it is appropriate. Participation in the interventions attached to a Youth Caution is voluntary and there is no separate penalty for failing to comply with them; however, failing to comply with the interventions would be a consideration in the choice of any future disposal options.

Youth Conditional Caution

The Youth Conditional Caution is a formal out-of-court disposal, but with compulsory assessment and intervention attached to it. A Youth Conditional Caution 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 Youth Conditional Caution 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 Youth

Conditional Caution can be reparative, rehabilitative or punitive in nature. Punitive conditions should only be used where rehabilitative and reparative conditions are not suitable or sufficient to address the offending.

The YOT is responsible for monitoring compliance with conditions and advising on non-compliance.

When the Youth Conditional Caution is being decided upon, the decision-maker should consider the mechanism by which compliance with the conditions will be monitored and demonstrated. This could include agreement with the police to monitor a curfew, or with HM Courts and Tribunals Service to collect a financial penalty. This should be set out in the Youth Conditional Caution form that is agreed to by the young person, the YOT and the police.

The victim's consent must be obtained in any case where direct reparation or restorative justice processes are being considered or where the victim is directly involved in some way.

Restorative justice processes and initiatives may be used to help inform the decision as to the conditions to be attached to a Youth Conditional Caution.

Failure to comply with the conditions can result in prosecution for the original offence.

All offences are eligible for a Youth Conditional Caution disposal, but if the offence is an indictable-only offence, the CPS will need to be consulted and authorise the decision to offer a Youth Conditional Caution.

Charge.

Charging an offender means that the case will be put forward for prosecution in court. The police may charge any summary-only offence irrespective of plea. They may also charge any either-way offence anticipated as a guilty plea and suitable for sentence in a magistrates' court, providing it is not one of the following:

- a case requiring the consent to prosecute of the Director of Public Prosecutions or law officer
- a case involving a death
- a case connected with terrorist activity or official secrets
- a case classified as hate crime or domestic violence under CPS policies
- an offence of violent disorder or affray
- An offence causing grievous bodily harm or wounding, or actual bodily harm
- A Sexual Offences Act offence committed by or upon a person under the age of 18
- An offence under the Licensing Act 2003.

Prosecutors (normally the CPS) will make charging decisions in all indictable-only cases, any either-way offences not suitable for sentence in a magistrates' court or not anticipated as a guilty plea, and for specified offences.

There are occasions when a young person has been charged, but a prosecutor decides that the case should be adjourned for consideration of an out-of-court disposal. An admission of guilt is essential before a Youth Caution or Youth Conditional Caution can be given and it will only be in **exceptional circumstances** that a young person who has been correctly charged will receive such a disposal. The principles in this guide should be applied in such cases. Where an out-of-court disposal cannot be given, an explanation should be given to the CPS, who will decide whether the prosecution should proceed at the adjourned hearing date.

General

Every effort should be made to avoid unnecessary criminalisation of children in care (Looked after Children). This is in recognition that criminalisation can be a barrier to successful transition to adulthood and future life prospects and in recognition that the life histories of many Looked after Children make them particularly vulnerable to involvement in the criminal justice system.

It is every professional's responsibility when working with Looked after Children to strive to understand the underlying causes of a young person's behaviour.

Victims and communities have a right to be protected from Looked after Children offending and an entitlement to have their needs and interests taken into account in finding ways forward in the aftermath of challenging/offending behaviour.

Restorative approaches should underpin our response, whether or not this behaviour occurs 'in-house' or out in the wider community. This involves a commitment to work restoratively not only with those Looked after Children but also those who they may have harmed by their behaviour.

All professionals within the system should pursue an integrated approach to reduce Looked after Children offending.

Those Looked after Children already within the criminal justice system also need protection from escalation and these principles should apply to them equally.

Looked after Children attracting a custodial sentence or remand are often the most vulnerable with multiple, over-lapping risks and needs requiring careful oversight and support from youth offending teams, Children's Service departments and custodial facilities. If their involvement in offending is to be successfully addressed, preparation and planning for their through-care and resettlement should start from their point of entry into the establishment and involve all relevant professionals in their lives. Particular attention should be given to the early identification of suitable post-custody accommodation.

All professionals have a duty to ensure that any special needs presented by Looked after Children (or those harmed) such as mental illness or speech and language difficulties are acknowledged and addressed in the management of the response to the behaviour.

It is in the best interests of young people to remain within their 'home' authority wherever appropriate where they can benefit from the services of their own corporate parents.

Corporate parenting boards have the key responsibility for ensuring their children are protected from offending and criminalisation and should ensure that work is effective across social care and with criminal justice partners to achieve this.

Corporate parenting boards must be confident that they have an accurate picture of offending by children in their care and should ensure systems are in place to identify all those who are offending whether placed within the home authority or outside.

Police involvement and decision making

It will be an expectation of all local authorities that staff and carers of children in care (Looked after Children) will strive to manage challenging behaviour at the placement address by way of internal resolution without involvement of the police wherever possible.

Where this is not appropriate such as where there is concern about immediate safety, and where police become involved, the police should consider use of discretionary powers to apply an informal resolution response (such as community resolution).

In circumstances where such a response is inadequate in the face of the seriousness of the offence then police should routinely consider potential for diversion from criminalisation/prosecution through discussion in local joint-decision making forums (wherever these have been established under 'legal aid, sentencing and punishment of offenders act 2012') and to consider suitability for a restorative case managed informal resolution, wherever such disposals are available: taking into account the wishes of those harmed and where the Looked after Children makes admissions to the offence. The good practice principle here is for procedures to allow for a cooling off period, for decisions to be reached in slow time and informed by key workers/officers (such as police link workers for residential settings) to advise on case progression/diversion.

Where Looked after Children decline to make admissions or where the offence is serious enough to merit consideration of prosecution then Crown Prosecution Service guidance on decisions to prosecute looked after children: 'Offending behaviour in children's homes – Crown Prosecution Service guidance' should be actively applied. Furthermore, it should be the responsibility of the local authority to

proactively assist the Crown Prosecution Service in reaching informed decisions in consideration of Looked after Children cases.

Children in care placed outside of their local authority

Children in care (Looked after Children) placed outside their local authority should be afforded the same protection against involvement in offending and criminalisation as those placed within their local authority.

Wakefield District should ensure that there are reciprocal arrangements giving other local authority Looked after Children the same protection as home Looked after Children and the opportunity to achieve the same outcomes as their peers.

Where a Looked after Children offends out of area then it will be the duty of those in the area in which the offence has taken place to consult and discuss ways forward with the Looked after Children's home authority, to ensure informed decision-making and that appropriate action is taken to address the risk of repeat offending in the future.

To assist in the above each local authority/police area will work to ensure that a directory of key contacts is in place to ease communication across the region.

The 'crime and disorder act 1998 section 115' ensures that all agencies involved in preventing offending have the power to disclose information for the purpose of preventing crime and disorder. It is vital in the prevention of offending, and protection of vulnerable young people that agencies develop an environment of information sharing that demonstrates to young people agencies working together and keeping each other informed.

With the above in mind the home local authorities will notify the receiving authority (within five working days) that a Looked after Children is moving into their area, to mitigate against the risk that decisions will be made without knowledge of a young persons' 'looked after' status.

Response to incidents occurring outside the care placement

In respect to incidents that occur outside of the care placement that may involve harm caused to members of the public then ideally police and/or partners will consult with those involved and explore potential for cases to be dealt with by means of informal resolution (restoratively) wherever this is possible and within the scope of local joint decision-making arrangements.

Local decision-making practices will vary from one area to another but as a general principle in all cases (other than where there is a clear non admission of responsibility) all children in care (Looked after Children) decision making ought to be referred to the new joint decision-making panels that have arisen from the 'legal aid, sentencing and punishment of offenders act 2012'. These joint decision making

panels need to have special regard to decision making in respect to Looked after Children that ensures decision making is informed by information gathered from professionals associated with the child with a view to ensuring that the best possible service can be mobilised to address the unmet needs of those involved, support any restoration and work to reduce the risk of further offending.

The protocol supports the Department of Education national minimum standards for children's homes, which state that: "the homes' approach to care minimises the need for police involvement to deal with challenging behaviour and avoids criminalising children unnecessarily".

This protocol further supports the Ofsted inspection framework which under the key judgement: 'The experiences and progress of children looked after and achieving permanence' says that local authorities are likely to be judged as good if:

- "Any risks associated with children and young people offending, misusing drugs or alcohol, going missing or being sexually exploited are known by the local authority and by the adults who care for them. There are plans and help in place that are reducing the risks of harm or actual harm and these are kept under regular review by senior managers".

This protocol should be read in conjunction with the attached protocol on police contact (**Wakefield Protocol when contacting the Police in respect of Children in Residential Care**).

This protocol further supports the HMIP thematic report, 'Looked after children: An inspection of the work of youth offending teams with children and young people who are looked after and placed away from home' which recommends that youth offending team managers should ensure that:

Accurate information about children and young people who are looked after and placed outside their home area is sent promptly to the youth offending team in the new area.

Assessments, intervention plans and reviews on children and young people take full account of the impact of being looked after.

The enforcement processes for court orders and post-custodial licences are sensitive to, and take account of, the circumstances of children and young people who are looked after.

Action is taken, where appropriate, to increase the number of children and young people who are dealt with through restorative justice measures when they offend within the residential setting.

Implementation – action required

The protocol creates a set of new imperatives for all signatories to work together across the region to:

Provide and maintain an up to date list of relevant contacts.

Notify other local authorities when children in care (Looked after Children) are placed in another authority (within five working days).

Further develop informed joint decision-making arrangements at a local level that takes full account of children's 'looked after' status and circumstances.

Create a consultation between 'host' and 'home' local authorities/police authorities.

Wakefield Protocol when contacting the Police in respect of Children in Residential Care.

A decision to contact the Police should normally be taken by the Registered Manager or residential staff, unless a serious incident has occurred, in which case residential staff may contact the police immediately then inform a manager. See **Section 3, Notifications and Categories of Response.**

The following situations are the most common ones in children's homes where police involvement might be requested:

2.1 Violence by a Child or Young Person on Another

Incidents between residents within the home range from minor disagreements through the serious assaults where physical injury is caused. Such incidents can be complicated by having two vulnerable parties. Staff will need to ensure that health and safety reporting procedures are followed and risk assessments updated or completed.

Attendant factors for this category of offences are listed below and this list does not reflect any order of priority:

- Wishes of the victim;
- Severity of the injury sustained/nature of threat received by the victim;
- Probability of a repeat incident;
- Previous relationship between victim and offender;
- Potential impact on the child/young person following formal police involvement;
- Effectiveness of police action/court proceedings;
- Future best interests of both parties;
- Message sent to other young people;
- Availability of alternative causes of action, e.g. restorative approaches with the consent of the victim;
- Previous behaviour or offending, bullying/peer pressure/duress.

2.2 Violence to Staff by a Child or Young Person

Violence towards staff can vary from verbal threats to physical acts amounting to assault. Whilst each home has the responsibility of care

towards the young people their welfare needs to be balanced with the rights of staff not to be subjected to violence in the course of their duties.

Such incidents are affected by factors similar to those listed above, and staff should be encouraged to report any incidents that cannot be dealt with through alternative means. Where there is no immediate continuing threat of violence it is in the best interests of the staff member to take time to discuss and consider possible options.

This can include a referral to the Youth Offending Team, via the relevant social worker, which will give consideration to the necessary intervention. This however, does not remove the individual's right to involve the police. Following such incidents it is important that staff utilise standard de-briefing processes.

Health and safety reporting procedures should be followed. Staff should also ensure risk assessments are updated or completed in relation to the risk of violence or injury to themselves or colleagues. A professionals meeting could be a useful method by which to assess these risks and look at ways this risk could be reduced.

2.3 Criminal Damage Within the Home

The majority of criminal incidents involving Police relate to damage to the children's home. It is important to see these in the context of the needs of the child and whether involving the police is an effective and proportionate response. Factors to consider are listed and the list does not reflect any order of priority:

- Level/value of damage caused;
- Previous incidents of a similar nature by the same child or young person;
- Suitability and effectiveness of Police involvement;
- Impact of Police involvement on the child's overall care plan;
- Message sent to other young people if applicable;
- Availability of alternative courses of action, for example referral to the Targeted Youth Justice Service via the relevant social worker.
- Restorative practice option to offer improved understanding of impact.

2.4 Theft Within the Home

Most offences of theft within the home are likely to be of low value, but the possible start of criminal behaviour, although it should be emphasised that value is a subjective issue relative to the victim. Factors to be considered

include (this list does not reflect any order of priority):

- Wishes of the victim;
- Nature and seriousness of the allegation;
- Requirement for formal investigation, e.g. insurance claim requires a crime reference report;
- Availability of alternative courses of action, e.g. restorative approaches.

2.5 Criminal Damage to Staff Cars/Property

Factors for consideration should be similar to those in **Section 2.3, Criminal Damage within the Home**, and again this list does not reflect any order of priority:

- Nature and seriousness of the allegation;
- Requirement for formal investigation, e.g. insurance claim;
- Wishes and best interest of the victim;
- Availability of alternative courses of action, e.g. restorative approaches.

2.6 Disorder in or around the Home

The area of disorder is subjective and requires judgement by staff to avoid unnecessary Police involvement for minor infringements of discipline. The main factor which should be considered is:

- Nature and seriousness of the disorder;
- Risk of threat of violence;
- The wishes of and impact on the immediate community;
- The availability of alternative courses of action.

2.7 Trespass within and around Home or Placement

All incidents of trespass by persons unknown causing high safeguarding concerns should be reported to the police as visits/trespass by outside associates of residents can be dealt with effectively under the Harassment Act, which will protect young people and staff.

2.8 Substance Misuse

The misuse of controlled drugs within a home is a serious issue and it is essential that the response is prompt and effective. In response to incidents staff will be guided by the Government Tackling Drugs Strategy, which has

four main aims:

- Help young people to resist drugs use in order to achieve their full potential in society;
- Reduce the acceptability and availability of alcohol and other drugs to young people;
- Minimise the health risks and other damage associated with substance use by young people;
- Increase the safety of communities from drug related crime.

Staff will need to balance these principles with their duty of care for the young people in the home or placement and their role in managing young people's behaviour as part of their care responsibilities as well as their responsibilities to the wider community.

2.9 Hate Crime (Racist, Religion, Homophobic, Gender, Disability)

All possible steps should be taken by the police at local level, in consultation with local government and other agencies to encourage the reporting of racist incidents in crimes;

It is important that the agency that receives reports of racist incidents is well equipped to deal with them and no one should be given the task without adequate training;

It should be made clear that all behaviour policies held within Homes should cover the areas as indicated as hate crime and it be made clear how staff, staff and residents should deal with it. Homes and placements should themselves handle low level daily occurrences and their management of this aspect of discipline should be subject to inspection;

A multi-agency approach to such incidents can ensure that help is provided to victims of these incidents providing them with a range of options for reporting and ensuring that the young person is sufficiently supported;

When dealing with the incidents outlined as Hate Crime in relation to racist incidents, whether or not the incident amounts to a crime, the person reporting should be asked to consent to the disclosure of this information to other agencies for the sole purpose of prevention or detection;

In the recording of racist incidents the minimum data content required should be as follows;

Reported to: (The person receiving the report such as Residential Service Manager, Registered Manager, Unit staff, Police Officer);

At: (Location reported at): (i.e. Home, Police Station, etc.);

Referred by: (the Agency or other person referring the victim to the Police if the incident is being referred);

Time and date of report and nature of incident.

3. Notifications and Categories of Response

It is recognised that caring for, and managing young people with difficult or challenging behaviour is an integral feature of residential care work. Residential staff and foster carers will generally manage problematic situations except where they are so severe that immediate police involvement is essential in order to avoid physical assault or damage. The Protocol identifies four categories:

- Serious Incidents;
- Minor Incidents;
- Liaison;
- Internal Incidents.

3.1 Serious Incidents

Incidents of violence requiring an immediate police response where children/young persons or staff are:

- At risk of immediate serious physical harm;
- Where there is a risk of substantial damage to property; or
- Risk of significant disorder with the home.
- In such situations the Manager of the Home/Senior Person on Duty should contact the police using the 999 system.
- If the Manager has not been consulted/informed prior to contacting the Police, s/he should be notified without delay.
- If the Police are called to the home, the Designated Manager (Police Incident) must be notified;
- Children's Homes Regulation 40 may require an Ofsted notification on assessment by the Registered Manager.
- If a serious offence is committed, the Designated Manager (Serious Offence) must be notified.
- It will also be necessary to notify the social worker and the Regulatory Authority.

3.2 Minor Incidents

This is an incident where no immediate police response is required for

example where assaults or damage has occurred and there is no risk of recurrence/Significant Harm to people, or incidents of theft. The incidents should be reported to the home's manager who then has the responsibility of identifying the appropriate course of action.

It is important to avoid any unnecessary reporting of incidents to the police. Should the Manager decide and/or the victim wishes that formal police involvement is necessary, where possible this should be through liaison with the local Neighbourhood Police Team (NPT) Officer.

When a situation involving a child or young person is to be discussed with the Area Beat Officer a liaison meeting may be arranged. The child's social worker should be informed and they may wish to join the discussion.

If the discussion needs to be held sooner the Manager should arrange for a member of the NPT to visit the home as soon as possible. If there is a specific officer who frequently liaises with the Home and this officer is unavailable the Manager should contact the Police Control Room to request a scheduled response visit by another Officer.

In certain circumstances preservation of evidence may be an issue and residential staff will need to ensure that reasonable steps are taken to retain articles relevant to any criminal allegation or police investigation.

3.3 Liaison

Police involvement should be on a risk assessment basis. The **primary** police involvement in children's homes where possible should be through a member of the NPT liaising with staff on a regular basis. Whilst some officers may already perform this duty it must be emphasised that a good working relationship is the most effective way to respond to young people with difficulties, and it is in this area that consideration should be given for joint agency training.

A regular liaison meeting between a member of the Police and Manager would provide for discussion of not serious incidents within the home to identify the appropriate method of resolution, including:

Internal action by Staff with no police involvement;

Formal police investigation primarily by a member of the Local Policing Team and any resulting action.

This liaison meeting will also provide an opportunity to share more general views and co-operation and develop a better understanding of each Agencies responsibilities and practices. Discuss new admissions and

locality concerns in line with Children's Homes Regulation 46.

It is not the intention of this Protocol to restrict the options available to Residential Staff and the Police but to emphasise the importance of flexibility in determining the most suitable option for dealing with children and young persons. Additional advice and support could be sought from the child's social worker.

3.4 Internal Incidents

It is anticipated that relatively minor incidents will be addressed by using routine internal policies and procedures