

# ***Pan Cheshire Protocol 2021***



***Reducing the unnecessary  
criminalisation of Children in Care***

# Introduction

Cheshire's protocol has been produced to address the recommendations set out in the Department for Education's 'National protocol on reducing unnecessary criminalisation of looked-after children and care leavers', providing clear operational guidance for residential providers and agencies within the Criminal Justice System. The national protocol published in 2018 was aimed at various agencies including; local authorities, police services, Youth Justice Services (YJS), the Crown Prosecution Service (CPS) and many more who are involved in providing support for children in care. Cheshire's local multi-agency protocol aspires to reduce the unnecessary criminalisation of Cheshire's cared for children and care leavers in an ethical and proportionate way. The protocol builds on recommendations set out in the Prison Reform Trust's Review, authored by Lord Laming, 'In care, out of trouble'. It has been developed with reference to the most recent national guidance and effective practice surrounding youth diversion (e.g. from the Centre for Justice Innovation). Signatories from all Criminal Justice Agencies are documented at the end of the protocol.

Since 2008, children entering custody has fallen considerably. The decline has been connected to realistic cost reduction as well as a significant growth in diversionary measures. The number of children that are categorised as looked-after remains significantly high in the youth justice system in comparison to non-looked-after children. In the year 2018, 68% of children in custody and receiving criminal sentences in the UK, had a history of being in care. Therefore, the key motive of this protocol is to encourage and provide the framework for these agencies to work collaboratively and create local arrangements to reduce these high records and unnecessary criminalisation. The 2018 national protocol sets out what agencies need to do to ensure cared for children and care leavers are deterred from the criminal justice system wherever possible through alternative strategies. It is then the local agencies objective to implement their responses and explain their actions on how it will be achieved operationally.

The local agency partnership acknowledges that children can at times be criminally exploited and their needs may be maintained through a method which seeks to address this, which can involve multiple agencies. An incorrect response to behaviour which is challenging can contribute to the failure of placements and can be related to a drift into criminal and exploitative sub-cultures across the county. This negatively impacts not only the prospect of placements remaining secure and achieving positive outcomes, but also the future and long term ambitions of care leavers who are also over-represented in the criminal justice system.

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Care leavers have been estimated to make up 27% of the adult prison population and 25% of the homeless population in the UK. In working together, it is paramount to decrease these numbers. To set some context as a view of the volume and proportion of children in care in Cheshire open to Youth Justice Services (YJS). Nearly 20% of all children open to YJS on the 1<sup>st</sup> April 2021 were cared for or care leavers, however they only constitute a fraction (1.8%) of the total number of children Cheshire local authorities care for (albeit some of these will be in care placements outside of Cheshire).

It is important to note that evidence shows that highly punitive sanctions have little impact on recidivism.

## Aims

Signatories to this pan Cheshire protocol include the four local authority areas: Cheshire East, Cheshire West and Chester, Warrington and Halton with each being responsible for contracting and ensuring correct management of residential providers within the county. Cheshire Constabulary are responsible for supporting agencies and implementing enforcement of the operational guidance associated with this protocol. Mersey-Cheshire Crown Prosecution Service act as the prosecuting agency within the county certifying correct application of legislation and ensuring appropriate outcomes for those young people who are in the youth justice system. The Cheshire Youth Justice Service are accountable for delivering a fair and objective service to young people within Cheshire ensuring preventive measures are in place as well as interventions to deter away from further criminalisation. All agencies are accountable for delivery of the protocol including escalation where necessary.

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### The objectives of the protocol are to:

- To reduce the unnecessary criminalisation of cared for children and care leavers.
- To encourage and increase the use of restorative justice approaches to managing behaviour within the children's homes.
- To underpin and strengthen the multi-agency dedication to reducing the criminalisation of cared for children and care leavers.
- To strike a balance between the rights, responsibilities and needs of the young person and the rights, corporate parenting responsibilities, and duties of staff and the local authorities. This further includes decisions to instigate Police action and whether or not Police involvement is the most appropriate course of action on an individual incident basis.
- To maintain that the rights and needs of victims are given due attention in any decision making process relating to the offending child.

## Key Principles

It is each professional's duty when working with children to strive to comprehend the underlying causes of a young person's behaviour. Understanding the rationale of the child's actions, including their needs and perceptions should be at the centre of any incident. Listening to their voices should be dominant to all agencies practice/response to incidents involving cared for children and care leavers.

Cared for children often have multiple disadvantages which compound their vulnerability and increase the likelihood of 'contact' with the justice system. These children may not know they have neurodevelopmental difficulties or might mask the challenges they have, displaying them

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through negative behaviours and actions as their only means of communicating their needs. We are moving to the term neurodiversity to embrace these differences and this protocol acknowledges the particular disadvantages and therefore the greater exposure cared for children have with the justice system. Each Local Authority Children's Services department has a SEND offer and distinct services dedicated to children in their care but a key principle of this protocol is to ensure criminal justice agencies (and professionals working outside of children's services) will be aware of, and sensitive to, the vulnerability and multi-layered social disadvantages of cared for children. Every child in care has a care plan which sets out how multi-agency professionals will meet their needs.

Every strength should be created to avoid the unnecessary criminalisation of cared for children. It is acknowledged that many cared for children have suffered abuse and trauma, disturbing their emotional and behavioural maturity, theoretically making them particularly susceptible to involvement in the criminal justice system. Often children in care, coming into contact with the criminal justice system, is out of their control, as they can be criminally exploited, and said criminalisation can be a barrier to a positive transition to adulthood and future life prospects.

If a crime has taken place it is an individual's right to have that crime recorded. In line with National Crime Recording Standards all crimes will be acknowledged and recorded correctly by Police. To replicate this within a care setting all incidents should be acknowledged, recorded and supported should the individual wish to do so.

The causes of youth offending are often beyond the reach of just one agency. A 'child first' approach should be adopted with all professionals providing an integrated, harmonised and pro-active response in order to prevent, address and solve challenging behaviour.

The principles set out within this protocol strive to not only prevent criminalisation but also offer protection to those children and young people already in the justice system from escalation.

To assist corporate parents, a phrase used to define those agencies who have collective responsibility for providing the best possible care and safeguarding of the child, with the fundamental support to provide appropriate care to our young people there must be a multi-agency approach to prevent criminalisation. This includes work from social care, placement providers, educational settings, health services, the police and other criminal justice partners.

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Whilst the overwhelming aim of our care system is to keep our children safe it must be recognised that it is about promoting recovery, resilience and wellbeing.

All professionals have a responsibility to ensure that any special educational needs (including communication and interaction, cognition and learning and social, emotional and mental health difficulties) presented by children in care or those harmed by an incident are identified, acknowledged and addressed in the management of the response to the behaviour.

Agencies must recognise the vital role of early intervention and prevention in reducing criminalisation. The placement of the child must meet their identified needs as this will significantly contribute to this prevention.

Restorative approaches should be present in all responses for incidents which occur in-house and in the wider community.

## In-Care Settings

All residential providers, including foster carers should apply a 'Reasonable Parent Test' when determining involvement from law enforcement agencies. The benchmark being that if the incident had occurred within a 'typical' structured home environment would a reasonable parent/guardian involve the Police?

Low-level behavioural matters do not require a Police response. This should be managed in the respective care setting with the test applied; "would this be good enough for my child?"

A written behaviour management policy setting out the measures of control, restraint and discipline which may be used should be referred as an aide to in-house responses. It is necessary for all incidents within placements to be recorded to ensure there are informed histories of the young person, should a situation arise in the future whereby Police are called, and a Police Contact Form is to be completed.

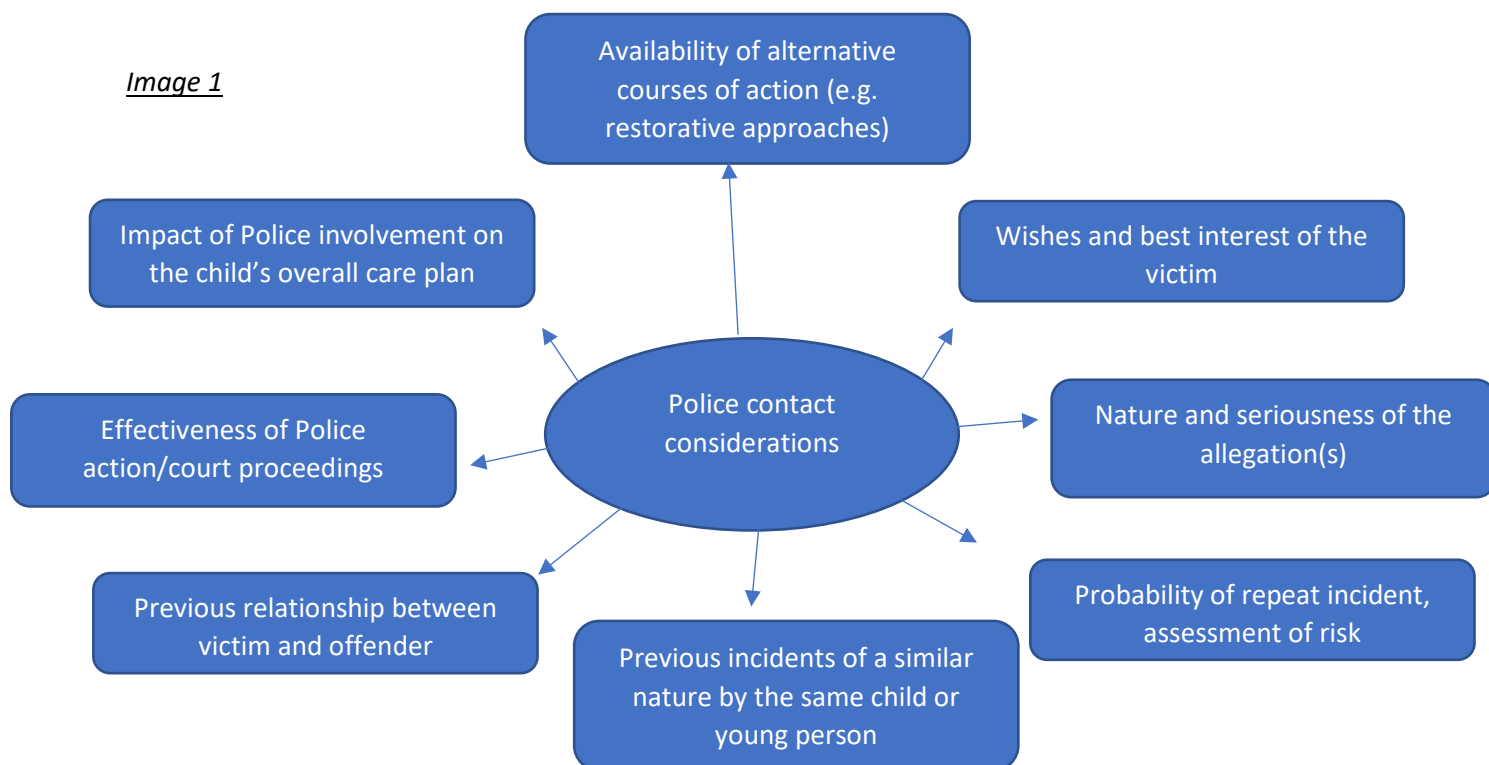
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Cheshire Police data identifies the most common causes for Police call outs include violence by a young person, criminal damage, theft and disorderly behaviour.

When addressing **all** incidents, the below should apply:

- Staff within the care setting need to consider all factors relevant at the time when considering action. Image 1 provides a diagram of considerations for care staff before calling the Police.

*Image 1*



- Consideration should be made to training and in-house behaviour management policies.
- A consultation should take place with other on duty staff and management when deciding on actions. It should be considered that the situation can be managed via the Care Plan for the young person concerned and liaising should take place with their Social Worker regarding this.
- The question should always be considered of whether Police attendance is the most effective or proportionate response. In the situation whereby there is a significant loss of control then Police attendance may be required. If the Police do attend and discuss

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the incident with the young person, it must not be assumed or expected that this will automatically result in the arrest of the young person. Assurance is given that if a crime has been reported then this will, without fail, be recorded as such in line with the National Crime Recording Standards.

- Consequences for the actions of the young person should be agreed, this should be decided following consultation with colleagues and where appropriate the victim and other agencies; such as Children Social Care, Police and YJS.
- The victims' right to involve the Police is to be respected and supported.

All efforts, if appropriate, must be made to ensure that the child is kept within their 'home' to ensure they are able to benefit from local services provided to them.

# Police involvement

As part of the Cheshire protocol, the agencies signed up will commit to de-escalating and have internal management until the threshold has been reached for Police involvement - in short that there is an unacceptable and unmanageable level of risk to personal safety.

Police involvement should be a final resource when dealing with incidents involving Children in Care. Wherever appropriate, other professionals should be approached to deal with challenging behaviours by means of discretion and diversion such as informal education, the use of permitted sanctions and restorative justice.

Where there are incidents which can have grave consequences such as a potential for serious injury, serious harm or serious financial loss; it is recognised that such events require a Police response.

The below flow chart explains the process followed by Police once a call has been received:



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THRIVE assessment conducted around deployment and necessity to attend



If attendance is required then the officer, via the control room, obtains all information including victim (if any), location, suspect and anything else relevant through both national and local systems



Patrol to arrive at scene under whichever response criteria deemed necessary



Patrol to de-escalate situation and mitigate threat, risk and harm factors



Care staff to provide Officer with Police Contact Form



If a crime has occurred then it will be recorded in line with the National Crime Recording Standards



Officer to use the form and relevant information to ascertain the circumstances and establish if any criminal offences have occurred



Officer to make a decision on appropriate resolution. This will centre around Force policy - Young Person 3D approach:  
Discretion, delay and diversion in the first instance



**Arrest only when absolutely necessary** and if the necessity test is met.

Discretion, diversion and delay preferable.

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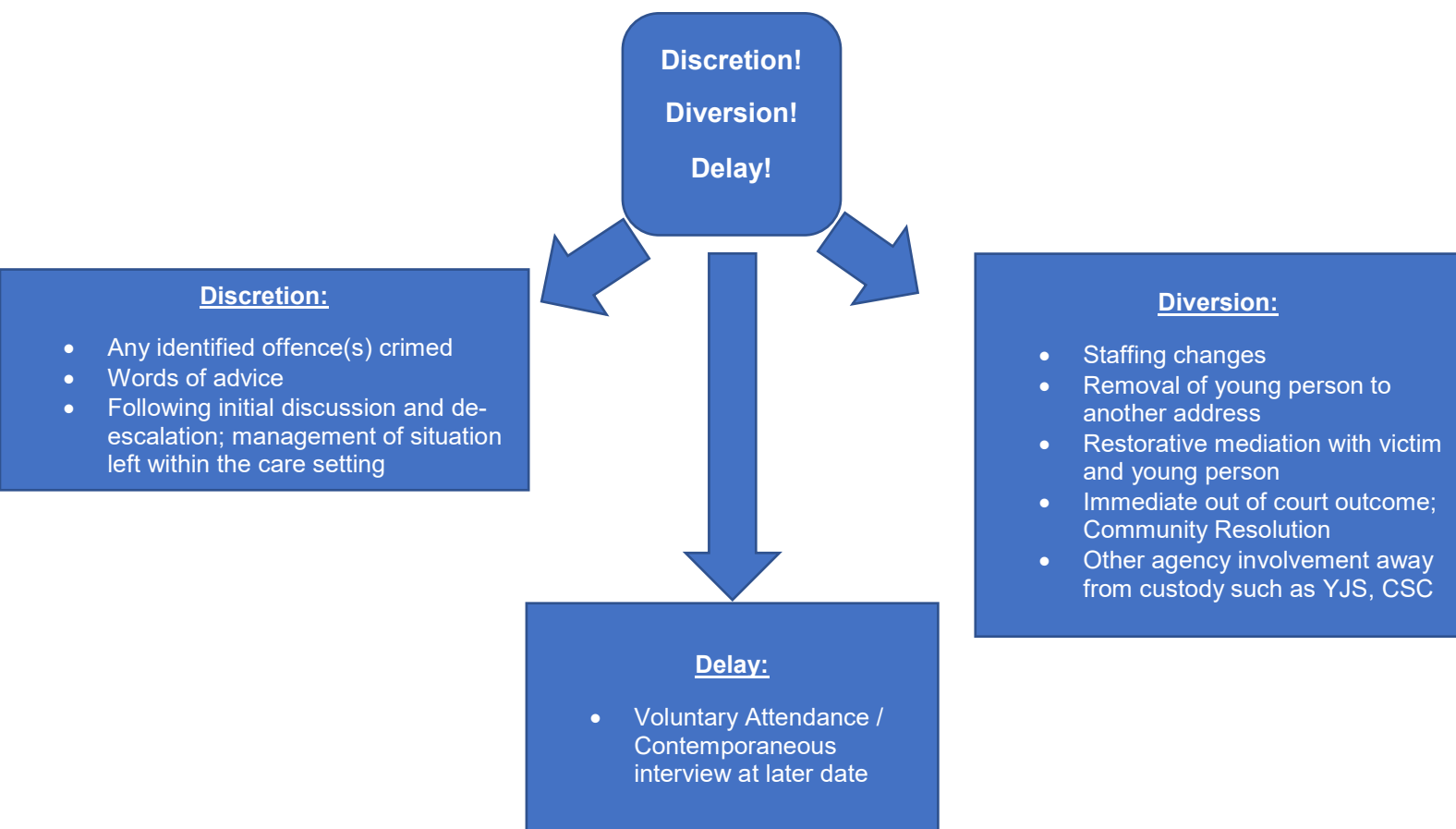
**The decision to arrest a young person remains with the Police Officer(s) in attendance.**

Processes in place by the Constabulary should be followed by all deployed officers.

To aid decision making, the officer should be presented with a completed Police Contact Form (Appendix 1). Good practice allows for a cooling off period, for decisions to be reached slow time and informed by a host of professionals. The Police Contact Form should be presented to the Custody Sgt if a decision to arrest is made and uploaded to the case file along with the CPS 10 point checklist (Appendix 2), Youth Checklist (Appendix 3) and VPA (if applicable).

### **3D approach**

Before arrest, consideration must be made for discretion, diversion or delay as detailed in the below illustration:



Cheshire Constabulary in line with the Youth Justice Service have agreed an operational guidance document to guide Youth Justice Workers and Police Officers in the use of Out of Court Disposals for young people ([YJS Cheshire Police OOCB Protocol April 2020](#)).

# Transfers and Detentions

Once charged, the presumption should be that the young person is released/bailed to return home unless there is a reason why the address is no longer viable. If a young person is denied bail, unless impractical to do so, they must be transferred to local authority accommodation under section 38(6) of the Police and Criminal Evidence Act 1984. PACE transfers take place to limit the amount of time children and young people are required to spend in Police Custody. In the event of these circumstances, the custody officer is required to document contact with the Local Authority to request accommodation.

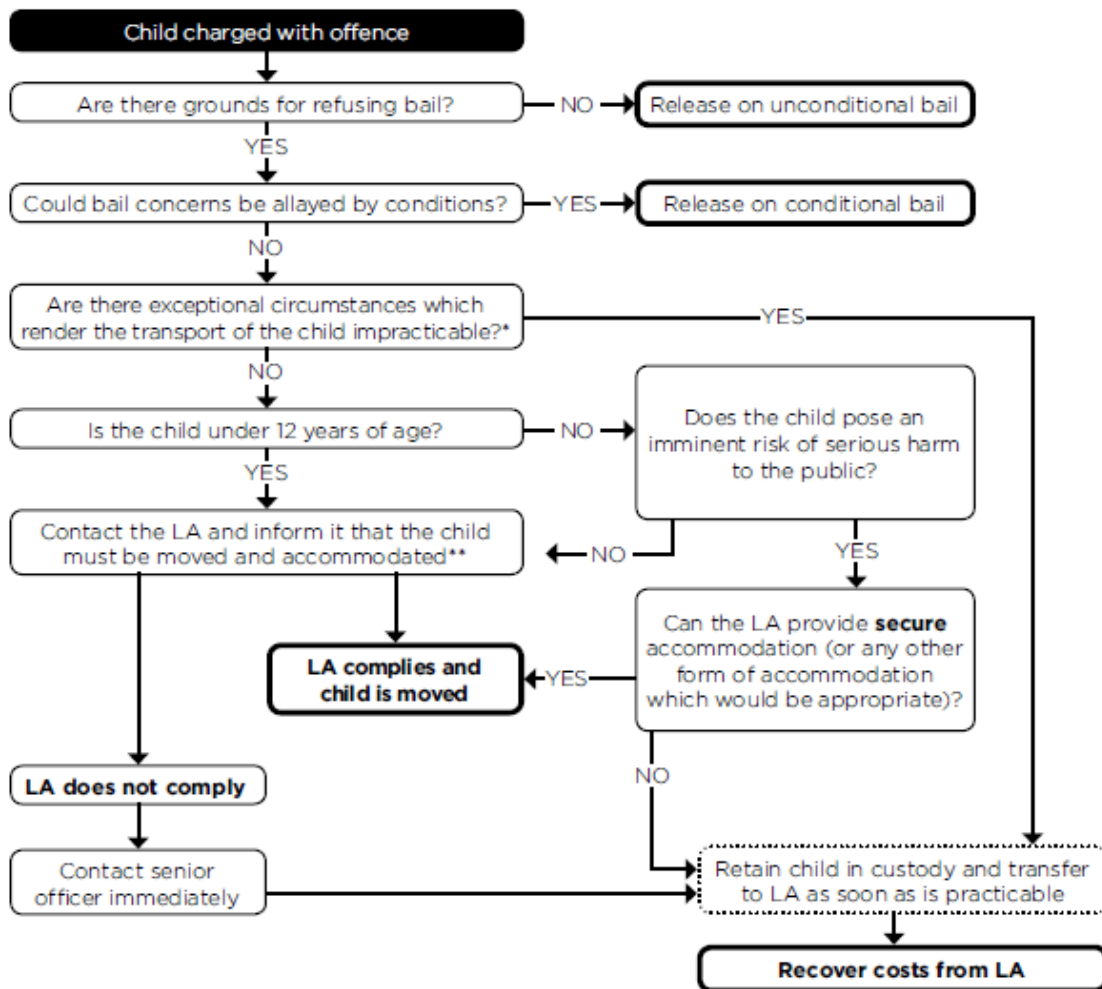
There are only exceptional circumstances when any child should be detained overnight in Police custody. These include when a young person is arrested for breach of bail conditions or on a warrant. Transfer under Section 38(6) PACE 1984 does not apply and these young people will be detained in Police custody for court at the next available sitting.

Certain conditions under Section 98 and 99 of the Legal Aid, Sentencing and Punishment of Offender Act 2012 must be met when deciding to remand a juvenile in custody.

The below diagrams from the Concordat highlight the processes for both Police and Local Authorities around the transfer of children from Police custody:

## Police process for children in custody

under section 38(6) of the Police and Criminal Evidence Act 1984

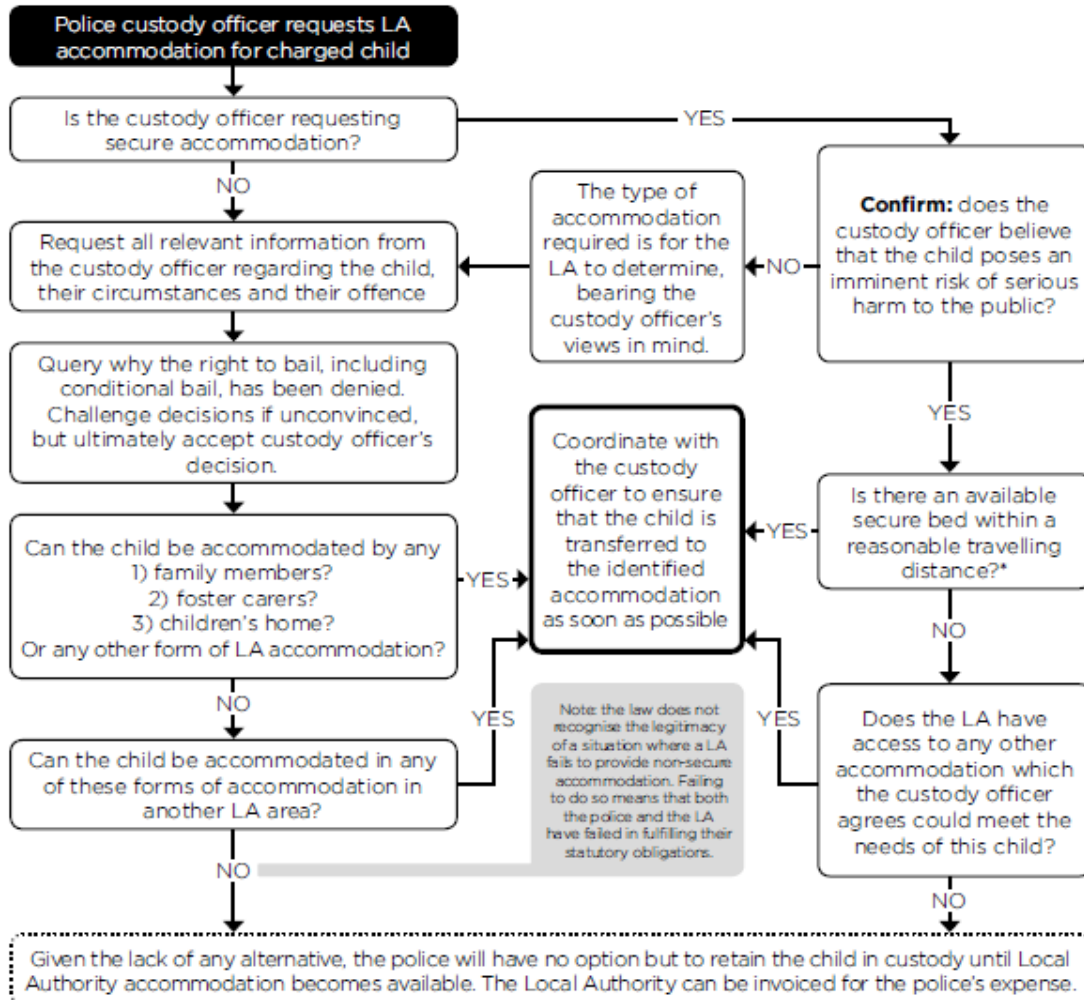


\* Circumstances which would render transfer impracticable do not include the availability of Local Authority accommodation, the nature of accommodation offered by the Local Authority, the child's behaviour, nature of offence, or the availability of transport.

\*\* Custody officers should ensure that the Local Authority is provided with all relevant information about the child and the offence for which they are charged, including reasons for the denial of bail.

## Local Authority process for transfer of children from police custody

under section 21(2)(b) of the Children Act 1989



\* A reasonable travelling distance would be one which allows the child to be transferred without preventing them having a sensible amount of sleep in advance of their court appearance.

# Decision to Prosecute

The following principles apply:

- A Youth Offender Specialist will undertake the major reviews of files involving youth offenders and take all major decisions in relation to those files.
- It is essential in all decisions to prosecute that, having considered the evidence, prosecutors identify and determine the relevant public interest factors tending for and against prosecution. If there is sufficient evidence to establish a realistic prospect of conviction a prosecution will usually follow unless the prosecutor is satisfied that there are public interest (PI) factors tending against prosecution, which outweigh those tending in favour.
- It is important, in appropriate cases, to obtain sufficient information about the youth's home circumstances and background from sources such as the Police, Youth Offending Service, and Children's Social Care before making the decision whether to prosecute. This should be obtained via submission of a VPA, Youth Checklist and 10 point plan to CPS with the file. It is important that this information is also present on all Police Charge cases.
- For those youths for whom formal diversion is not an option, it is still important to ensure that a prosecution is only brought in circumstances where this is a proper and proportionate response.
- Informal disposals such as restorative justice conferencing, reparation, acceptable behaviour contracts and disciplinary measures by the home may be sufficient to satisfy the public interest and to reduce the risk of future offending.

The evidencing of some other intervention or disposal that has addressed the key issues could potentially satisfy the PI short of a formal disposal/prosecution. In theory it is still possible if there has already been more than one informal disposal **BUT** the continued use of informal

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disposals suggests that the risk of future offending is not being reduced which may in fact be cited as a reason why the PI would now be met by a more formal disposal/prosecution.

### **Bail Conditions for cared for children and care leavers**

The court may attach conditions to bail to meet certain statutory objectives, tailored to the individual case: to prevent offending, ensure attendance at the next court appearance, prevent interference with the course of justice and to ensure completion of reports for court.

All parties to this protocol should seek to ensure by any representations made to the court in relation to bail conditions that cared for children and care leavers are not adversely affected purely by their status as such. The court should be asked, on each occasion that a bail conditions is imposed upon a cared for child and care leavers, to fully explain the extent and limits of the condition. This is particularly important when a condition to comply with the rules and regulations of a care home, a condition to reside as directed by the Local Authority or a condition to live and sleep as directed is imposed.

## **Decision to Divert from Court**

If the question of suitability for diversion is raised at court and it is considered appropriate by the Prosecutor, the case should be adjourned for a short period of time for an assessment by the local Youth Justice Service. The agreed timescale for this purpose is 21 days. In those minority of cases whereby the young person fails to engage with YJS, the matter would be returned to court to consider a prosecution – therefore, there is clearly a significant incentive for the child to engage.

Ultimately, the YJS and CPS will discuss considerations for discontinuing proceedings with the final decision made by the CPS.

Where the decision to prosecute has been taken by a Youth Offender Specialist and the public interest has been determined in favour of prosecution it would not normally be considered appropriate to adjourn the case for further consideration of diversion unless there has been a significant change in circumstances or significant information not known to the Youth Offender Specialist has become known.

The Youth Justice Board guidance states that 'there are occasions when a young person has been charged, but a prosecutor decides that the case should be adjourned for consideration

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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.'

This highlights the importance of the decision-making processes that take place prior to cared for children and care leavers being charged to court.

# Compliance

It is expected for all signatories to comply with the requirements set out within this protocol. There is a view that compliance for Care Providers will be included as part of Local Authority contracts.

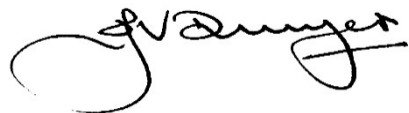

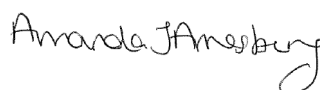


Recording on young person's case files, including internal sanctions and notifiable events will be adhered to.

In the event of Police attendance, the Police Contact Form is to be completed by the residential provider, Officers will not leave the address without the relevant paperwork.







This protocol is to be reviewed every 3 years at the Cheshire Criminal Justice Board.



# Signatories

<b>Chair – Cheshire Criminal Justice Board:</b> <i>Police Crime Commissioner John Dwyer</i>	
<b>Chief Officer, Cheshire Constabulary:</b> <i>Assistant Chief Constable Una Jennings</i>	
<b>Director, Warrington Borough Council - Children's Social Care</b> <b>(Chair of Protocol Group):</b> <i>Amanda Amesbury</i>	
<b>Head of Criminal Justice and Custody,</b> <b>Cheshire Constabulary:</b> <i>Superintendent Simon Parsonage</i>	
<b>Cheshire Constabulary Project leads:</b> <i>Inspector Matthew Lagar /</i> <i>Olivia Newman</i>	

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<b>Head of Youth Justice Services:</b> <i>Gareth Jones</i>	
<b>Crown Prosecution Service:</b> <i>Deputy Chief Crown Prosecutor</i> <i>Aksha Shahid</i>	
<b>Cheshire East Council:</b> <i>Steven Nevitt</i>	
<b>Halton Borough Council:</b> <i>Liz Davenport</i>	
<b>Warrington Borough Council:</b> <i>Amanda Amesbury</i>	
<b>Cheshire West and Chester</b> <i>Helen Brackenbury</i>	

# Appendices

## Appendix 1: Police Contact Form

Where possible and safe to do so, all incidents should be discussed with a Manager. All non-serious incidents should be dealt with without the need for Police involvement.

**In the event that the Police are called, this form should be completed in ALL cases.**



Police Contact Form.pdf

- **Care Homes must ensure that there are enough of these forms available to be completed and handed to Police Officers ON arrival. If this is not appropriate at the time, then as soon as is practicable thereafter.**
- **Foster carers must also provide Police with the contact form and copies of this form and guidance should be provided to the carer by the appointed social worker for the child.**
- **Police Officers must ensure that Form is collected upon attendance at an incident in a Care Home.**

To be completed by Children's Home			
Name of young person:			
Date of Birth:		Age:	
Address:			
Social Worker:			
Is the Young Person open to YJS?	Yes	No	
Date of Incident:		Time of Incident:	

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Summary of Incident			
Method of de-escalation prior to Police attendance			
Police response deemed necessary?	Yes	No	
Reason for contact with Police			
Prior to contacting the Police (999/101) was advice and guidance sought from any other professional involved:			
YJS	Social Worker	Neighbourhood Policing team	Other – please state
Comments by Senior Officer / Manager of Children’s home:			
Name:		Date:	
Signature			
<b>To be completed by Police Officer</b>			
Name of attending officer:			
Discussion between care home staff and attending Police Officer?	Yes	No	
Please state outcome	Arrest	Informal Action	
Were the Police and care home staff in agreement about the decision?	Yes	No	

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If not, please provide details:	
Proposed Plan if informal action agreed:	
Date:	

### Authorisation of Delegated Corporate Parent

I agree / disagree that formal police action in respect of the above offence is necessary

Name: <i>(Care Home Manager)</i>			
Signature:		Date:	


### Appendix 2: CPS 10 Point Plan



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cklist.doc

To be completed and submitted on file for every cases involved a cared for child.

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### 10 POINT CHECKLIST FOR OFFENCES IN CHILDREN'S HOMES

HAVE YOU CONSIDERED?

<b>1</b>	Disciplinary Policy of Children's Home?	
<b>2</b>	Why have the police been involved and is it as agreed in the policy?	
<b>3</b>	Any informal action /disciplinary action already taken	
<b>4</b>	Any apology/reparation	
<b>5</b>	Victims Views	
<b>6</b>	Social Worker Views	
<b>7</b>	Care Plan for Looked After Child (If necessary and lac agrees)	
<b>8</b>	Recent behaviour/incidents re looked after child	
<b>9</b>	Information about incident from looked after child (interview or other)	
<b>10</b>	Aggravating and Mitigating Features	

### Appendix 3: Youth Checklist

To be completed with every youth submission



Youth%20Checklist  
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**Youth Checklist - To be completed for every youth case submission**

**All circumstances surrounding the offence and the circumstances of the youth must be considered when deciding whether to prosecute.**

*Failure to do so may result in proceeding for Judicial Review (R v Chief Constable of Kent and Another*

URN:			
<b>Suspect Details</b>			
Name			
Date of Birth		Age	
Proposed Offences			

<b>Officer Details</b>			
Name			
Collar Number		Rank	

*ex parte L, R DPP ex parte B (1991) 93 Cr App R 416)*

<b>Circumstances of the Youth</b>			
Resident Address:	<i>**Please provide details of any previous foster/children's home placements and reasons for moves</i>		
Is the young person looked after by a care home?	Yes	No	If yes, has a 10-point checklist <b>AND</b> Police Contact Form been completed?
Does the young person attend school/college?	Yes	No	

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If yes, please provide details of type of school, courses being undertaken, previous incidents dealt with by the school, any incidents of bullying either by or of the youth.			
Does the young person work?	Yes	No	If yes, please provide details of type of employment
Is the youth a young carer, looking after someone with a disability or long-term illness?	Yes	No	If yes, please provide details
Does the youth have a diagnosed mental illness or physical illness/disability?	Yes	No	If yes, please provide details

<b>Background and Views of Others</b>
What are the views of relevant welfare agencies?
<p><i>Section to include:</i></p> <ul style="list-style-type: none"> <li>• <i>Offenders understanding of the offence</i></li> <li>• <i>Likelihood of repetition</i></li> <li>• <i>Likely effect of proceedings on mental state</i></li> <li>• <i>Alternatives to prosecution</i></li> </ul>



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What is the attitude of the youth and their parent(s)/guardian(s)?		
Has the youth previously been dealt with by any of the following? (If yes, please provide details and dates):		
Police		
Youth Justice Service		
Local Authority Children's Services		
What of the views of the youth's key worker/social worker/CAHMS worker on the effect of prosecution? (If applicable)		
Is the youth subject to any notification requirements pursuant to Section 80 Sexual Offences Act 2003?	Yes	No
Has the youth been charged with any other offences which are in the process of being dealt with at Court?	Yes	No
If yes, please provide details of offences, plea if known and next court date		
Is the youth considered dangerous and/or is there a significant risk of serious harm by commission of further offences?	Yes	No

<b>Circumstances of the Offence</b>		
Is the offence part of repeat offending behaviour?	Yes	No
Has there been any impact on the community because of the offence?	Yes	No
Is the offence a hate crime?	Yes	No
Is the victim vulnerable?	Yes	No

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<p>What are the views of the victim? Please include:</p> <ul style="list-style-type: none"> <li>• Overall effect on the victim of the offence</li> <li>• Their views on prosecution/out of court disposal?</li> <li>• Willingness to attend court</li> </ul>		
What is the ACPO Youth Offender Gravity Score?		
Has any admissions been made?	Yes	No
Has an apology/reparation been offered/made?	Yes	No

<b>Consideration for Out of Court Disposal</b>		
Has an out of court disposal been considered?	Yes	No
<p>If OOCd not appropriate, please provide reasons why? E.G.</p> <ul style="list-style-type: none"> <li>• Offence not admitted</li> <li>• Offending history</li> <li>• Seriousness of offence</li> <li>• Gravity score of 4</li> <li>• Indictable only offence</li> </ul>		
Is the offence contrary to Section 5–8, 13, 25, 26, 64, 65 Sexual Offences Act 2003?	Yes	No
If yes, is there a risk assessment/report prepared by the local authority or youth offending service in respect of sexually harmful behaviour? (eg AIM assessment)		
If No, has one been sought?		

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What is the background and history of the parties?

*To include:*

- *Age of all parties*
- *Nature of any relationships*
- *Emotional/Physical Effects of the conduct on the victim*
- *Impact of prosecution on the children/families involved*
- *Views of families of all parties*