  

# Derbyshire Joint Agency Protocol Regarding Offending by Children in Care

**Version 4 March 2022**

**Introduction**

It is recognized that the vast majority of young people who enter the care system do not exhibit criminal behaviours and never become the subject of police investigation. However, some Children in Care are disproportionately represented in the Criminal Justice System despite being some of society’s most vulnerable children and young people. This includes young people offending through bullying/peer influences, exploitation and unaccompanied asylum seekers and migrant children.

This protocol provides local arrangements in line with the National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers. It is intended to assist social care staff (primarily in residential children’s homes), the police, the Crown Prosecution Service (CPS), Local Youth Bench and the Derbyshire 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.

It is noted that this protocol has been in place for some years but that there was a need to review the current document to reflect changes in legislation and to ensure that the same processes were followed for children in care who are living in foster homes. To this end, our internal Fostering service are fully signed up to this protocol.

Since the introduction of this Protocol in 2009 there has been a significant reduction in the numbers of young people who have been criminalized for their behavior within the Derbyshire County Council’s residential children’s homes. All agencies continue to be committed to working together, to reduce offending and unnecessary criminalisation of Children in Care.

The definition of “Children in Care” for this Protocol is :

“Any Child who is Looked After by Derbyshire County Council. (Section 20, Interim or Full Care Order)

* With foster carers
* In a Derbyshire County Council residential children’s home

#### This protocol does not formally cover

* Children in Care in Derby City
* Children in Care in private / Independent Children’s Homes/Independent Fostering Agencies/ semi-independent homes but very much as a partnership we are committed to holding these providers to the same standard and where there are potential offences committed, the approaches considered below will be considered . Formally, in the next 12 months, we will expect formal sign ups to this protocol to be considered as an approved provider of homes for our children.

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 **1.Aims and Purpose**

The aim and purpose of this Protocol is to promote effective practice and professionalism through a multi-agency approach in working together to reduce unnecessary criminalisation of Children in Care.

The aim is to do this through:

* Ensuring the rights and needs of children and young people in residential homes/foster homes, social care staff and the local authority are considered fully.
* Support and develop clear processes for addressing offending incidents in residential homes.
* Clarify the information required by the police and CPS in considering prosecutions
* Emphasize the importance of regular and effective liaison between residential home staff, foster carers, the local police, CPS, YOS and Children’s Services.
* Strengthen the use of alternative approaches in social care settings through promoting the Derbyshire Children Services model of Stronger Families, Safer Children which includes the use of restorative practice in resolving conflict.

## 2.Additional Guidance

Additional information pertaining to the protocol can be found at:

* + Ofsted Framework for Inspection of Children’s Homes 2015
	+ Childrens Homes (England) Regulations, including Quality Standards Guide 2015
	+ The Code for Crown Prosecutors – The CPS :Youth Offenders”
	+ NPCC Children and Young People Strategy

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 Children’s Services Policy & Practice Guidance for staff in Children’s Residential Homes.
	+ Foster Carers should refer to the Foster Carers’ handbook.
	+ YOS Practice and Procedures
	+ Concordat on Children in Custody - October 2017
	+ Derbyshire CSC-YOS Protocol – January 2021
	+ National Protocol on Reducing Unnecessary Criminalisation of children in Care and Care Leavers
	+ Data Protection Act 2018
	+ Human rights Act 1998
	+ The Common Law Duty of Confidence

## 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 may be 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 relevant Head Of Service who has the responsibility of identifying the appropriate course of action or if they are not available discuss with DCC Rapid Response Team, if out of hours. In addition, the child/young person’s social worker should be contacted 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

#### Internal Resolution

Derbyshire County Council (DCC) children’s homes and Foster Carers 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’s Services policies and procedures including PACE (playfulness, acceptance, curiosity and empathy), Proactive Strategies for Crisis Intervention and Prevention (PROACT-SCIPr UK) and restorative practice approaches such as connection before correction.

#### No immediate police response required, but police input helpful

#### This is an incident where ASB/crime has been committed and no immediate police response is required. For example an incident of theft, assault or damage has occurred and there is no significant threat, risk of harm identified. The incident should be reported to the relevant Head of Service, who then records the discussion. Advice can be sought from the YOS Children in Care (CIC) Social Worker if deemed appropriate.

It is important to avoid any unnecessary reporting of incidents to the police. Where police advice and support is needed contact should be made with any of the identified Police Single Point of Contact or through the Police main call centre number 101.

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.

#### 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.

## 4.Recording of Incidents

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 (refer to relevant internal policies)

* Notification / Serious Incident Report Form
* 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.

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’s Services staff will support this approach.

## 6.Prosecution Requirements

### For Children in Care, custody and section sergeants will take into account the CPS 10 point check list which is completed by the home/Team Manager 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)
* Referral to YOS for an out of court disposal
* Charge

## 7.Role of Police

The Police will appoint a liaison officer to each area. The officer will normally be from the local Safer Neighbourhood Team 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/Foster Carers
* Assist staff to resolve internal problems without the need for formal complaints to be reported
* Help to promote a good relationship between the all agencies
* 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, Section Inspectors and YOS 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.Role of 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

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 and young people 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, CPS, and Children Services should work 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. **The *10 Point Checklist of information should be applied by the Police and CPS when making a decision to charge a Child in Care with an offence.* See Appendix A.**

If a case is referred to the CPS for a charging decision by the Police or if a child or 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 Checklist from the Police/Children Services in order to complete a full review of the case in accordance with the Code for Crown Prosecutors:

* The disciplinary policy and behaviour management and relationship policy
* An explanation from Children Services regarding their decision to involve the Police, which should refer to the procedures and guidance on Police involvement.
* Information from Children Services about the recent behaviour of the child or young person, including similar behaviour and any incidents in the child or young person’s life that could have affected their behaviour. Any history between the child/young person and the victim, any apology or reparation by the child/young person.
* 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 carer/social worker/counsellor/CAMHS worker on the effect of criminal justice intervention on the child/young person, particularly where the child/young person suffers from an illness or disorder.
* Any explanation or information from the child/young person in care.
* Details of the child/young person’s Care Plan and Risk Management Plan/Safe Care 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.Role of HM Courts Service**

Due to the seriousness of an offence(s), some outcomes may see children in care being referred to the Youth Court for an outcome. In sentencing, magistrates should have an understanding of the vulnerabilities of Looked-After Children. Consideration must be given to the fact that the vast majority of Looked-After Children enter care due to abuse and neglect and the impact of trauma, abuse and additional vulnerabilities on their emotional and development.

**10.Information Sharing**

Effective and appropriate information sharing and communication is vital to ensuring Looked-After Children receive the right support to avoid criminalisation and to assist appropriate decision making.

The Data protection Act 2018 allows that practitioners can share relevant personal information about a child or young person lawfully if it is to keep a child/young person safe from harm, or to protect their physical, mental and emotional wellbeing. All practitioners should aim to gain consent but should be mindful of situations where to do so would place a child or young person at increased risk of harm.

## 11.Monitoring the Protocol

To evaluate multi-agency commitment to this protocol all parties should be aware of its impact. This will be through reviewing at least six monthly:-

* 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 every two years or when there are any legislation changes.

**Appendix A**

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

*Note : Sections 1-8 to be completed by foster carers/residential care staff*

 *Sections 9 and 10 to be completed by police and CPS*

|  |  |  |
| --- | --- | --- |
| 1 | **Disciplinary Policy of Children’s Home***Copies of the Behaviour Management and Relationship Policy and the ‘Joint Agency Protocol regarding offending by Children in Care’ are available on request.* |  |
| 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/resolution?** |  |
| 5 | **Victim’s views***Willingness to attend court, engage in a restorative intervention?* |  |
| 6 | **Social worker’s views***The views of the key carer, social worker, YOT or CAHMS workers involved with the child/young person on the effect of potential criminal justice system intervention.* |  |
| 7 | **Care Plan for Child/Young Person in Care***What is the plan regarding their placement? Is it permanent / long term? What additional support does the child/young person receive eg education, CAMHS, YOT?* |  |
| 8 | **Recent behaviour / incidents re child/young person in care***Including those of a similar nature, historical relationship between young person and victim, setting the offence into context.* |  |
| 9 | **Information about incident from child in care (interview or other)***Will be gathered from police interview.* |  |
| 10 | **Aggravating and Mitigating Circumstances***CPS/Police to complete this section* |  |

**Appendix B**

Criminal offence identified using 10point Checklist. Care staff complete 10 point checklist completed and send to Police within 24 hours

Police record crime & undertake appropriate investigation. Police/CPS complete 10 point checklist

Charge

Refer YOS for OOCD

NFA

Criminal offence not identified

Internal Resolution

Internal Resolution

Record internally- Consider appropriate referrals- NFA

Immediate police response required

Call 999

Police Required?

Refer to DCC Internal Policies

Advice and assistance-non immediate

* Discussion with Manager on Call
* Discuss YOS/Social worker and/or
* Discuss with police assigned liaison officer

Residential home staff to consider 10point checklist