

**The
Northumberland
protocol on
reducing
unnecessary
criminalisation of
looked-after
children and care
leavers**

Introduction

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

The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765082/The_national_protocol_on_reducing_unnecessary_criminalisation_of_looked-after_children_and_care_.pdf

This is Northumberland's **local multi-agency protocol** that seeks to reduce the unnecessary criminalisation of Northumberland's looked-after children and care leavers. Northumberland is ambitious for all its Looked After Children and Care Leavers and wants to give them the best chance possible to succeed in life. As a good corporate parent this includes ensuring that as far as we are possibly able we prevent looked after children and care leavers from entering the criminal justice system. When they do have involvement with it we want to provide them with the support required so that they receive the best outcome possible. It recognises that children can at times be criminally exploited and their needs may best be supported through an approach which seeks to address this.

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

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

Underlying Principles

Every effort should be made to avoid the unnecessary criminalisation of looked-after children. This is in recognition that many looked-after children have experienced abuse and trauma, affecting their emotional and behavioural development, potentially making them particularly vulnerable to involvement in the criminal justice system, including through criminal exploitation, and that criminalisation can be a barrier to successful transition to adulthood and future life prospects.

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

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

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

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

Northumberland's Approach

The approach to the protocol in Northumberland has been informed by the information and evidence contained within the National Protocol as referenced above. It has, however, been developed to meet local circumstances and builds upon what is already established practice to support our most vulnerable children.

This approach has been developed through a multi agency steering group and wider task and finish groups which have brought together representatives of partner agencies who are key to supporting children and young people and those who are key to the criminal justice system.

There are four core areas which make up Northumberland's protocol:

Prevention

Within Northumberland all agencies understand that preventing looked after children and care leavers from ever becoming involved with the criminal justice system significantly helps with providing them with the best outcomes.

Ensuring looked-after children and care leavers have the right placements that meet their identified needs will significantly contribute to prevention. It is recognised that caring for and managing children and young people with behaviour which can be perceived as difficult or challenging can be an integral feature of work within care placements. There should be a presumption that foster carers, residential staff and carers and staff working in supported accommodation provision will generally manage negative behaviour 'in-house'.

Looked after children and care leavers interact with a whole range of agencies and professionals and it is important that all of them understand the reasons why looked after children and care leavers may behave in particular ways which are different to the universal population; key to this is their understanding of the impact of adverse childhood experiences and trauma on children, young people and adults.

A key part of this protocol is to promote awareness raising of why looked after children and care leavers need to be specifically considered when making decisions about involvement of the criminal justice system. This will be done through the development of a range of training options; face to face, e learning and building into current training packages the agreed approach for looked after children and care leavers as set out in this protocol and the reasons for that.

Response to incidents in the community

As part of Northumberland's protocol the agencies signed up will commit to de-escalation and in-house management, and have agreed to respond according to the framework set out in **Appendix 1**.

For those agencies who have not directly signed up to this protocol (schools, colleges, wider voluntary and community sector organisations etc) support and encouragement through the training and awareness raising offer will be provided so that they understand the importance of following this.

Future contracts which provide services for looked after children and care leavers will include a requirement for providers to adhere to the framework.

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

children.

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

Response by the criminal justice system

The approach being adopted by police and local authority enforcement agencies within the Northumberland is set out in the flow chart at **Appendix 2**. It is the responsibility of those agencies to ensure that this is followed but all agencies involved in decisions about how to proceed with a child or young person following a criminal offence need to be mindful of the process agreed here.

Where arrest is considered necessary there should be a presumption to interview children in voluntary reporting suites, outside of police custody, wherever possible.

If a crime is committed in another local authority and force area then every effort should be made across local authority and force areas to ensure the same principles are applied as if the crime was committed in Northumberland.

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

Support following conviction to prevent reoffending

Whilst in Northumberland a very low proportion of children who are involved with the Youth Offending Service are looked after children we know that of those a higher than average proportion go on to reoffend.

It is therefore paramount that where a child or young person is convicted of an offence or even if they receive an out of court disposal that every effort is made by all agencies working with them to minimise the risks of them reoffending.

☐ If a looked-after child or care leaver receives a community sentence, their social worker and YOS case manager/adult CRC worker should continue to work closely together, share information and clarify their roles and responsibilities to ensure the child receives the support they need.

Children and young people attracting a custodial sentence or remand are often the

most vulnerable with multiple, overlapping risks and needs. The youth offending service and children's (and adult's) social care need to work together to ensure the young person knows exactly where they are going to live prior to release and be prepared accordingly with a robust resettlement plan. Accommodation and on-going support should be known and in place well in advance of their release date.

Governance

The implementation of this protocol will be monitored through the Corporate Parenting Advisory Group (CPAG), the Multi Agency Looked After Partnership (MALAP) and through the Youth Justice Management Board.

Strategic Planning

There is a Reducing Offending by Looked after Children and Careleavers action plan which underpins this protocol. That is monitored through the CPAG, MALAP and the Youth Justice Management Board. These three bodies will also be responsible for the evaluation of the effectiveness of protocol and action plan.

Key Personnel

Each agency has identified a lead role to be the link for the delivery of this protocol in their agency:

Active Northumberland-General Manager

Crown Prosecution Service-District Crown Prosecutor

National Probation Service-Senior Operational Support Manager

Northumberland CCG-Children's Commissioner

Northumbria CRC-Northumberland LMC Manager

Northumberland NCC-Senior Manager, Commissioning; Acting Head of Service Early Help, Prevention and Support Services; Community and Environmental Health Manager; Solicitor, Information Governance; Principal Lawyer, Childcare; Team Manager, Northumberland Adolescent Service; Senior Manager Specialist Service/Head of Youth Justice Service; Senior Manager Family Placement; Senior Manager, Education/Virtual School Head

Deputy Chair, Youth Panel, North Northumbria Magistrates Bench

Northumbria Police-Chief Inspector (Area Command)

The needs of carers/victims

Foster carers, residential staff, other carers and professionals may experience loss or harm and the incident may impact on an individual's well being. Agencies will ensure that individuals employed by them receive access to the right support in a timely way. This will be sourced to meet individual need and come in a variety of ways, for example, mediation, access to learning and development, supervision, debrief process following any incidents.

When the foster carer, residential staff, other carer or professional have no option other than to have police intervention then key professionals will follow the relevant policy and procedure in supporting the individual.

Information sharing

- It is vital that agencies develop an environment of information sharing that demonstrates to young people that agencies work together and keep each other informed of developments in order to serve children's best interests.
- Whilst contemporary data protection legislation, particularly the General Data Protection Regulations ('GDPR') which have been enshrined in UK law since May 2018, is predicated on ensuring that 'Accountability' for the appropriate handling (including lawful, fair and transparent processing) of the personal data of individuals is paramount, this is by no means intended to fetter the ability to keep individuals safe from harm, nor to override competing legislation which may require that information is shared, or otherwise processed in a particular way.
- When processing data, practitioners need to be aware of their specific and broader duties under the GDPR, foremost of which is to establish a lawful basis for processing personal data relating to individuals, including sharing of information.
- All practitioners should aim to gain direct and informed consent to share information, but should be mindful of situations where to do so would place a child at increased risk of harm.
- Information may be shared without consent if a practitioner has reason to believe that there is good reason to do so, and that sharing the information will enhance the safeguarding of a child in a timely manner.
- Whilst consent (under GDPR Article 6 (1)(a) and 9 (2)(a)) has been identified by the Protocol as the lawful basis of choice, it is clear that in many situations, organisations will be able to rely on alternative bases for lawful processing under GDPR Article 6 and additionally (for 'Special Category' or 'Criminal Offence Data') under Articles 9 and 10 respectively.
- The Data Protection Act 2018 ('DPA 2018') goes hand in hand with the GDPR and allows that a practitioner can share relevant personal information about a child lawfully, if it is to keep them safe from harm, or to protect their physical, mental and emotional wellbeing. [Specifically - GDPR Article 9(2)(g) refers to a lawful basis for processing data for reasons of 'Substantial Public Interest'. The 'Conditions' for which are listed in Schedule 1, Part 2 of the DPA 2018 and amongst multiple categories includes (at section 18) for the protection of harm.]
- Where information is shared in applicable circumstances it is important to document the detail of the GDPR based reasons for the decision to do so, in order that a clear and contemporaneous decision making rationale is available.
- More generally, there are a host of wider GDPR related rights and responsibilities that organisations and practitioners should be mindful of, including but by no means limited to 'data minimisation' (not processing more than is necessary) 'data retention' (limited storage periods), rights to access data, rights to object to processing of data etc, [Some of these provisions are dis-applied in qualifying circumstances detailed in the Schedules to the DPA 2018, and reflecting the particular facts of different scenarios.]

- It is the responsibility of each of the organisations to make themselves aware of these provisions as a 'Data Controller'. Nonetheless, it is envisioned that valuable opportunities for training around awareness and need for positive information sharing as part of the Protocol will also focus on GDPR / DPA 2018 based rights and obligations.
- Some of the constituent organisations already have, or may be contemplating direct Information Sharing Agreements between each other; as a matter of good practice and to ensure a high standard of consistently lawful information sharing within and beyond the Care and Criminal Justice systems.
- It is envisaged that a comprehensive Protocol Information Sharing Agreement will be executed between all the organisations in due course, following the publication of renewed ICO guidance on Information Sharing in the Public Sector and of a revised Data Sharing Code of Practice.
- Pending this development, the respective organisations are committed to the highest standards of lawful data processing and to sharing knowledge, experience and information on an ongoing basis.
- Proactive, effective, and above all, lawful, information sharing in support of the aims and objectives of the Protocol will continue to ensure that positive outcomes are maximised for Looked After Children and Care-Leavers, for each of the four stages detailed above.
- In addition to the statutory guidance applying to agencies working with children, the key legal concepts, legislation and terminology relevant to information sharing are contained in:
 - General Data Protection Regulations
 - The Data Protection Act 2018
 - The Human Rights Act 1998
 - The common law duty of confidence

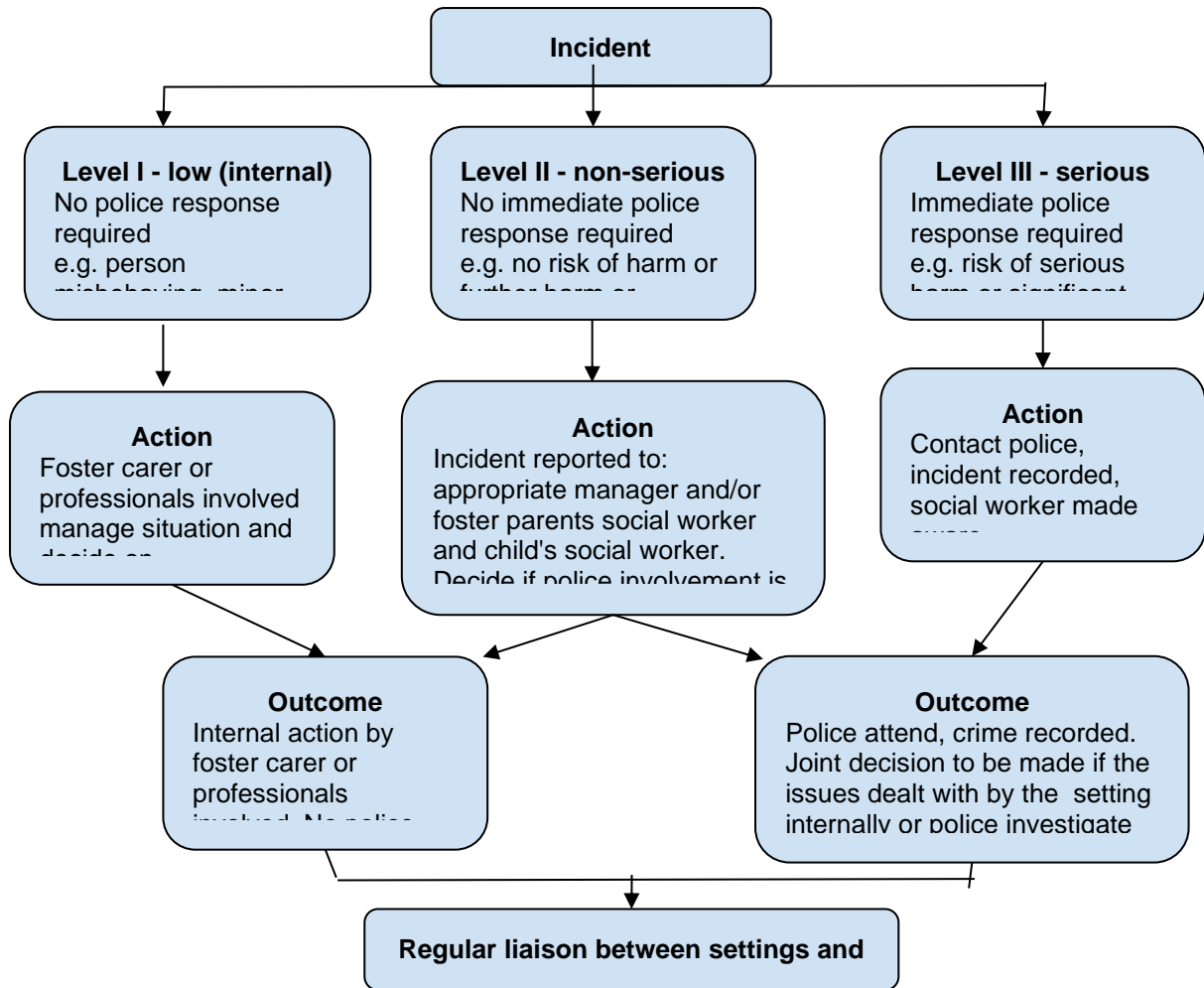
The information that could be shared between agencies for contextual safeguarding may include the following:

- Children and young people (both UK and foreign nationals) at risk of being sexually exploited (including regular updating of any CSE assessments), coerced into criminal activity, or trafficked.
- Children and young people believed to be criminally active.
- Children and young people identified as criminally active being monitored including recording their clothing, times in and out of the homes and any property appearing without formal recognition or identification.
- Areas identified as used by drug dealers in the locality of their placement.
- Sex offenders living in or near placements if relevant (including notification by police as part of information regularly provided to inform children's home Location Review Risk Assessments).
- Grooming activity in the location.
- Gang activity in the location.

Signatures

Name	Job Role	Organisation	Signature	Date dd/mm/yyyy
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Appendix 1
Deciding how to respond to an incident*



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

Appendix 2

