

**Thames Valley Protocol on Reducing Unnecessary Criminalisation of Children in Care and Care Leavers 2020**

1. **Introduction**

1.1 This Thames Valley (Including all local authorities contained within the area: Oxfordshire, Buckinghamshire, Milton Keynes, Slough, RBWM, Bracknell Forest, Wokingham, Reading and West Berkshire) regional multi-agency protocolseeks to reduce the unnecessary criminalisation of all Thames Valley children in care and care leavers.

1.2 Dated: September 2020 (to be reviewed in September 2022)

1.3 This protocol reflects the principles, ambition and includes direct quotations taken from the [**National Protocol on Reducing Criminalisation of Looked-After Children and Care Leavers (Nov 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)The national protocol describes ‘what’ needs to happen across the country. This **regional protocol** complements this by setting out ‘how’ the national protocol will be implemented regionally, and reflects the structure of services, care populations, stakeholders, governance and decision-making arrangements in the Thames Valley. This regional protocol allows for each Local Authority, Safeguarding Partnership, Youth Offending Team and Local Policing Area to develop a local implementation.

1.4 This protocol represents a **multi-agency partnership commitment** to reducing the unnecessary criminalisation of children in care and care leavers, and includes the contribution of relevant agencies and staff. Although not an exclusive list, this includes: Local Authority Children’s Services; Youth Offending Teams; Crown Prosecution Service; Police; HMCTS; the local Youth Panel (Magistrates); Care Services (including, kinship, fostering, and local authority and independent sector residential children’s homes); Care Leaver services; and any other private or voluntary organisations commissioned to support children in care.

1.5 All professionals, including social workers, teachers, police officers, foster parents, children’s home staff and YOT workers, have a duty to ensure that any special needs presented by children in care or those harmed (including communication and interaction, cognition and learning and social, emotional and mental health difficulties) are identified, acknowledged and addressed in the management of the response to the behaviour.

1. **Key principles**

2.1 Every effort should be made to avoid the unnecessary criminalisation of children in care, including through early intervention and prevention services. (See ‘Overarching Key Principles section of the [National Protocol](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 in recognition that many children in care have had adverse childhood experiences, experienced childhood trauma and abuse, affecting their emotional and behavioural development, potentially making them particularly vulnerable to involvement in the criminal justice system, and that criminalisation can be a barrier to successful transition to adulthood and future life prospects.

2.2 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.

2.3 The primary objective is for agencies to work together to prevent and reduce offending and the unnecessary criminalisation of children in care, accepting that children’s welfare and safety are paramount, taking a trauma informed approach.

2.4 As a society, we have a responsibility to ensure we protect the children we care for from unnecessary criminalisation and to ask ‘would this be good enough for my child?’

2.5 It is every professional’s responsibility when working with children to strive to understand the underlying causes of a young person’s behaviour, working in a trauma informed manner.

2.6 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 children in care and care leavers.

2.7 Whilst this protocol aims to prevent and reduce offending and avoid criminalisation of children in care, victims have a right to be protected from all types of offending. Therefore, where children in care 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.

2.8 Victims and communities have a right to be protected from offending and have their needs and interests taken into account in decisions on resolutions to offending.

2.9 De-escalation and restorative approaches should underpin response to negative behaviour to help avoid the prosecution of children in care and care leavers (up to the age of 25) wherever possible. Restorative Justice (RJ) is a process whereby the victim has an opportunity to be heard and state the impact of the behaviour, and the offender has the opportunity to understand the consequences of and take responsibility for their actions. Such RJ approaches can take place informally within the all types of care placement in response to an incident (where police involvement is not required) or as part of a recognised police outcome where it is considered to be appropriate.

2.10 Restorative and diversionary approaches should underpin our response, whether the behaviour occurs in a child’s placement or the wider community.

2.11 Children attracting a custodial sentence or remand are often the most vulnerable with multiple, over-lapping risks and needs. Youth Offending Teams (YOT) and Children’s Service Departments 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.

2.12 Accommodation and on-going support should be known and in place well in advance of their release date.

1. **Prevention**

3.1 Ensuring children in care have the right placements that meet their identified needs will significantly contribute to prevention.

3.2 It is important that agencies recognise the vital role of early intervention and prevention in reducing criminalisation of children in care and care leavers. Services should co-develop an approach that includes: prevention (such as addressing cause of adverse childhood experiences and mentoring), early intervention and appropriate response where children and young people do offend.

3.3 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 parents, residential staff and carers will generally manage negative behaviour ‘in-house’. They should have appropriate training and support to enable them to do so.

3.4 The police should not be used for low-level behaviour management or matters a reasonable parent would not have called the police over.

3.5 It is necessary for all incidents within placements to be accurately recorded to provide informed histories of those in care. All incidents must be recorded in the child’s personal file. Foster parents, residential staff and carers should bear in mind the potential impact of that record on a child, and recording should be objective and non-stigmatising.

[See SEND-code-of-practice-0-to-25](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf)

1. **Responding to incidents**

4.1 As part of co-developing and agreeing local arrangements, all parties should commit to de-escalation and in-house management, developing and agreeing a clear framework for responding to incidents similar to the one shown here - Deciding on how to respond to an incident. The voice of the child should be central to this.



4.2 In circumstances where an offence/incident does not pose any immediate safety risk (and where victim/s indicate that they do not wish to make statements in support of potential charge/prosecution) then such incidents should be recorded and managed internally, without the need to involve the police.

4.3 It should be recognised that each individual case should be assessed with a 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.

4.4 If the decision to call the police is made, then, upon the arrival of the police at the scene, a joint view (police and carer) should inform whether arrest is necessary and proportionate. Where arrest is considered necessary there should be a presumption to interview children in voluntary reporting suites, outside of police custody, wherever possible.

4.5 Where a crime has been committed, this will be recorded and investigated by the police. The decision regarding the outcome for the young person should be made in consultation with the joint decision-making arrangements for informed consideration of out of court disposal options. Where children placed out of area are involved, these arrangements should include their responsible authority).

4.6 In circumstances where informal, community resolution is inappropriate, police should, as a matter of routine, consider diversion from criminalisation/prosecution through discussion in local joint decision-making forums. The forum should consider if using a more substantial restorative intervention, potentially involving other agencies, is suitable.

**4.7** In some circumstances where more serious offending has occurred the police will lead the investigation, and the preservation of evidence may be necessary in order to secure evidence as part of the investigation.

4.8 Where there is an immediate risk to personal safety - 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.

1. **Support to reduce offending for those who do enter the criminal justice system**

5.1 Despite all agencies best efforts, there will be instances where children in care and care leavers have to enter the criminal justice system. As per the National Protocol, where this does happen, it should be underpinned by the following principles:

5.2 If a child in care is charged with an offence:

When a child in care is charged with an offence, it is important that they are not disadvantaged because of their child in care status. Local authorities should therefore ensure there are viable alternatives to a child being remanded to a secure establishment.

5.3 The home authority must ensure that the young person is:

* Legally represented by a solicitor with expertise in youth justice.
* Supported to understand what is happening to them.
* It is good practice for the child’s social worker to attend court with them, particularly on the day of sentence, to ensure that the child’s best interests are represented and that custody is used only as a last resort.
* If the child has an Independent Child Trafficking Advocate, they should be advised and be able to attend court to further support the child

5.4 All local agencies/protocol partners should sign up and adhere to the Concordat on children in custody [**(Link)**](https://www.gov.uk/government/publications/concordat-on-children-in-custody)and seek to avoid holding children in care overnight in police cells where possible.

5.5 If a child in care receives a community sentence, their social worker and YOT case manager should continue to work closely together, share information and clarify their roles and responsibilities to ensure the child receives the support they need.

5.6 If a custodial sentence is likely, the YOT worker and the child’s social worker should work together to prepare the child, explaining what will happen and how they will be supported. The social worker should feed in any relevant information to the YOT ahead of them preparing the pre-sentence report.

1. **Working together**

6.1 All agencies (including children’s social care, Youth Offending Teams, the Crown Prosecution Service, Police, HMCTS, the local Youth Panel (Magistrates), all types of care settings, Care Leaver services, and any other private or voluntary organisations, commissioned to support children in care locally), working together is key to delivering shared objectives in reducing offending by children in care and care leavers and protecting the public.

6.2 To implement this regional protocol effectively, key partners, including care providers, will need to co-develop and sign up to a protocols/arrangements appropriate to their needs. This process should include:

* Identification and involvement of all agencies/organisations necessary to ensure effective implementation of the protocol.
* Named senior leaders in all necessary partners agreeing to the protocol and committing to driving implementation of the protocol in their organisation.
* Agreeing an accountability structure and appointing a body to monitor the implementation and effectiveness of the protocol at regular intervals. This can be an existing structure, such as the three local safeguarding partners.
1. **Local Protocols**

7.1 This regional Thames Valley protocolseeks to reduce the unnecessary criminalisation of all Thames Valley children in care and care leavers. It recognises that in each Local Authority area there will be a local protocol setting out the arrangements needed to operationalise the regional protocol for the local area reflecting arrangements for each area drawing together Local Authority Children’s Services; Youth Offending Teams; Local Police Area; Care Services, Care Leaver services; and any other private or voluntary organisations commissioned to support children in care.

7.2 The local Protocols will include:

* **Governance:** e.g. Corporate Parenting Board, safeguarding partnership, YOT Management Board
* **Strategic Planning:** e.g. Reducing Offending by Children in Care Strategic Plans
* **Monitoring and Evaluation:** e.g. how monitoring and evaluation of progress will take place
* **Roles and responsibilities:** e.g. who is responsible for the implementation in agencies
* **Needs of carers:** e.g. support, training, care for carers/staff
* **Children in care who go missing:** e.g. reference local procedure on missing children

7.3 Additional guidance and information can be found in the [National Protocol](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) when developing a local approach and protocol.

1. **Information sharing**

8.1 It is vital 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. The Data Protection Act (2018) allows that any practitioner can share relevant personal information about a child lawfully if it is to keep a child safe from harm, or to protect their physical, mental and emotional wellbeing. All practitioners should aim to gain 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.

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:

* The Data Protection Act 2018
* The Human Rights Act 1998
* The common law duty of confidence

8.2 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 or criminally exploited, coerced in to 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.
1. **Crown Prosecution Service (CPS) response**

9.1 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, [Youth Offenders | The Crown Prosecution Service](https://www.cps.gov.uk/legal-guidance/youth-offenders) the basic principles of which can be applied to all placements.

**Signatures**

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| --- | --- | --- |
| **Name and Agency** | **Signature** | **Date** |
| **Stan Gilmour**Thames Valley Police  |   | 03/03/2021 |
| **Matthew Barber**Chair of Thames Valley LCJB |  | 11/03/2021 |
| **Andrew Morgan**Crown Prosecution Service | A drawing of a face  Description automatically generated | 08/09/2020 |
| **Peter Hodges**Bracknell Forest Youth Offending Service |  |  07/09/2020 |
| **Gina Carpenter**Reading Youth Offending Service |  | 07/09/2020 |
| **Kathryn Barraclough**Royal Borough of Windsor and Maidenhead  |  | 07/09/2020 |
| **Shelley LaRose**Slough Youth Offending Team |  | 07/09/2020 |
| **Dave Wraight**West Berkshire Youth Offending Team |  | 07/09/2020 |
| **Aletta Pretorius**Wokingham Youth Offending Service |  | 07/09/2020 |
| **Gavin Sandmann**Milton Keynes Youth Offending team |  | 07/09/2020 |
| **Aman Sekhon-Gill**Buckinghamshire Youth Offending Service |  | 07/09/2020 |
| **Jennifer Sergeant**Oxfordshire Youth Offending Service |  | 07/09/2020 |