



Policy and Protocol for reducing unnecessary criminalisation of Children in our care and Care Leavers

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TABLE OF CONTENTS

| Page | |
|-----------|---|
| 2 | <ul style="list-style-type: none"> • Introduction • Key Principles |
| 3 | <ul style="list-style-type: none"> • Prevention |
| 4 | <ul style="list-style-type: none"> • Responding to Incidents <ul style="list-style-type: none"> ▪ Internal Response ▪ Timed Response ▪ Immediate Risk to Personal Safety |
| 5 | <ul style="list-style-type: none"> • Recording of Incidents by Care Staff • Support to reduce offending for those who do enter the criminal justice system |
| 6 | <ul style="list-style-type: none"> • Children in our Care placed outside of Stockton on Tees |
| 7 | <ul style="list-style-type: none"> • Restorative Approaches • Virtual School • Monitoring and Evaluation |
| 8 | <ul style="list-style-type: none"> • Strategic Planning & Governance |
| 9 | Annex 1 – Flow Chart Showing Categories of Response |
| 10 | Annex 2 – Guide for Police responding to Children in our Care and Careleavers |
| 12 | Annex 3 – Guidance for Behavioural Incidents |

Policy and Protocol for reducing unnecessary criminalisation of Children in our care and Care Leavers

1. Introduction

‘We have made significant strides in reducing the criminalisation of children and young people... 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.’¹

‘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

This protocol represents a multi-agency partnership commitment to 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.

2. Key Principles:

- Every effort should be made to avoid the unnecessary criminalisation of children in our care, including through early intervention and prevention. Many children in our care have experienced abuse and trauma, affecting their emotional and behavioural development, potentially making them particularly vulnerable to criminalisation which 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 2) the unnecessary criminalisation of children in our care, 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 and listening to their voice should be central to all agencies practice and their response to incidents.
- Victims have a right to be protected from all types of offending. Therefore, where children in our 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.
- De-escalation and restorative approaches should underpin response to negative behaviour to help avoid the prosecution wherever possible. Restorative Justice (RJ) is a process whereby the victim has had an opportunity to be heard and state the impact of their behaviour, and the offender has the opportunity to understand the consequences of and take responsibility for their

¹ The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

² The National Protocol on Reducing Unnecessary Criminalisation of Looked-After Children and Care Leavers 2018

actions.

- Children attracting a custodial sentence or remand are often the most vulnerable with complex risks and needs. Youth Offending Teams (YOT) and 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, as outlined in Protocol for Joint Responsibilities Between the YOT and Social Care.

Prevention:

Many of the causes of youth offending lie beyond the reach of the youth justice system. All professionals should pursue a child-centred approach based on a broad range of agencies providing an integrated, co-ordinated and pro-active response to preventing and addressing challenging or offending behaviour.

All professionals, including Social Workers, teachers, Police Officers, care staff and YOT workers, have a duty to ensure that any special educational needs (including communication and interaction, cognition and learning and social, emotional and mental health difficulties³) presented by children in our care or those harmed by an incident are identified, acknowledged and addressed in the management of the response to behaviour.

It is recognised that children in our care and care leavers can be particularly vulnerable to all forms of exploitation. All professionals have a duty to ensure that exploitation of any kind is considered when any behaviour, including missing episodes indicates that there has been this coercion or influence on the child's behaviour, and where this is identified, the multi agency VEMT procedures must be followed.

Police Officers have committed to and are trained in Restorative Justice, and have rolled out trauma informed practice for the force to support Police Officers understanding and decision making when called to respond to presenting offending behaviours. In addition to this Cleveland Police have made the commitment to supporting multi agency Adverse Childhood Experience Training.

The YOT and key Social Care staff are committed to and are trained in restorative approaches, child development, trauma and attachment difficulties, and exploitation of all types as part of their training and development programme.

Carers and residential care teams within social care are supported by specialist services such as CAMHS in developing approaches and response plans to meet the complex needs of individual young people they care for.

In completion of assessment of needs and Care or Pathway Planning by Social Workers/Personal Advisors, special educational needs and any other vulnerabilities to offending behaviour will be supported to ensure appropriate responses to behaviour to prevent and reduce the need for a criminal justice response.

Social Workers/Personal Advisors can source the full range of preventative and targeted interventions to reduce the risk of offending or reoffending within Early Help and Youth Direction which will be prioritised for children in our care and care leavers to contribute to the Care or Pathway Plan. The range of interventions and referral routes are detailed within the Early Help Community Offer.

³ SEND Code of Practice 0-25

Ensuring children in our care have the right placements that meet their identified needs will significantly contribute to prevention of offending. Where a child is being brought into our care, social workers will gather information and seek views from all agencies involved to enable a carefully planned and thought out request for the right placement as outlined within Children's Services Bringing a Child Into our Care Policies and Procedures.

All placements are subject to monitoring visits are made routinely by an appropriately experienced and qualified member of Children's Services for the purpose of ensuring quality of care of young people placed in external provision. This will include specific scrutiny of responses of care providers to promote any behaviour which could lead to criminalisation of the child.

Responding to Incidents:

All parties are committed to de-escalation and in-house management, following the framework for responding to incidents in Annex 1. The voice of the child should always be central to this.

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.

Carers may need to seek advice before taking any action. If the Social Worker/Personal Advisor is not available, this advice is available through the Emergency Duty Team if needed out of office hours. Telephone: 08702 402994

Where assessed as safe and appropriate to do so, the Police will carry out interviews in the home or care environment for the child rather than an automatic requirement to attend custody. This will be dependent on safety as outlined below.

Internal Response (Level 1 - Low)

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.

The incident should be reported to the Manager of the setting and the Social Worker/Personal Advisor for the young person. Where ever possible, they should together take responsibility of identifying the appropriate response.

It is important to avoid any unnecessary reporting of incidents to the Police. Should the Manager decide (and/or the victim wishes) that formal Police involvement is necessary, contact should be made via the main Force switchboard.

Timed Response (Level 2 – Non-Serious)

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 children will be interviewed in voluntary reporting suites, outside of police custody, wherever possible. Please see Police Guidance at Annex 2.

Immediate risk to personal safety (Level 3 – Serious)

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, the manager of the home/senior person on duty should contact the police by calling 999. If the manager has not been consulted/informed prior to contacting the Police, they should be notified without delay if the Police are called to the home, or if a serious offence is committed, the relevant senior managers must be notified. It will also be necessary to notify the social worker and the Regulatory Authority (See Notification of Serious Events Procedure)

Where a crime has been committed, this will be recorded by the police. The decision regarding the outcome for the child should be made in consultation with the Youth Offending Team following the Police/YOT Joint Decision Making Process, to enable full exploration of all restorative responses available out of court, which can include alternative preventative and targeted interventions. The joint decision making has regard to the best interests of both children and victims of crime, with a view to protecting potentially vulnerable children and obligation to protect the public.

In certain circumstances, preservation of evidence may be an issue, carers and support workers will need to ensure that reasonable steps are taken to retain articles relevant to any police investigations.

Recording & Reviewing of Incidents by Care Staff

It is necessary for all incidents to be accurately recorded so as to provide informed histories on the Children in our Care and Care Leavers. Carers and workers are expected to contribute to assessments and attend and participate in meetings for those individuals they are working with.

All incident reports produced by staff should be quality assured by the manager and include an analysis of the incident, the views of the child and responses by the staff to the incident. The review should include consideration of any opportunities to adapt approaches or seek appropriate support for diversionary or restorative interventions. It should clearly identify any follow up actions to be taken by the home before it is shared with Social Worker, Personal Advisor or YOT worker as appropriate.

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

Despite all agencies best efforts, there will be instances where children in our 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:

- Personal Advisors, Residential staff and support staff will ensure that Care Leavers receive clear advice of their rights with the Police and what information to declare to Police to ensure that they receive appropriate consideration of the outcome of any arrest or investigation.
- If a child in our care or care leaver is charged with an offence, it is important that they are not disadvantaged because of their status.
- Stockton-on-Tees Borough Council and Cleveland Police have signed up and adhere to the Concordat on children in custody and seek to avoid holding children in our care overnight in police cells wherever possible.

- The Police Officer responding must ensure any reported offence using the 10 point checklist for children in care and care leavers prior to submission to the Crown Prosecution Service for consideration to charge as outlined in Annex 2.
- The Police Officer will ensure that a referral is made to the Liaison and Diversion Team, to ensure the child has an emotional and mental health screening to ensure there are no gaps in provision, and to help support appropriate outcomes for the offence to be determined.
- The Social Worker 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, 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 advocate, they should be advised and be able to attend court to further support the child.

The Crown Prosecution Service (CPS) will undertake a review of all charges prior to submission to court and review for any missed opportunities to divert the matter back to the police for an out of court decision.

When a child in our care or care leaver appears in court, YOT will gather information in relation to the existing assessments and Care or Pathway Plan, and discuss any further identified opportunities with CPS to divert a matter out of court.

If a child in our care or care leaver is being sentenced by the youth courts, their Social Worker/Personal Advisor and YOT Officer will work closely together, share information and clarify their roles and responsibilities to ensure the child receives the support they need, as outlined in the Protocol for YOT and Social Care. This includes children having the additional benefit of accessing the YOT CAMHS Nurse and Speech Language Communication Therapist for enhanced depth of understanding of these needs to inform planning and additional intervention.

Social Workers will promote restorative approaches within residential children's homes, foster care placements and supported living environments both within the Local Authorities own provision and external commissioned provisions.

In order to encourage a shared understanding of the issues and of the outcomes being sought, the YOT, Social Care and Police will also provide training and/or seek opportunities for joint training to with relevant stakeholders about the care system, the criminal justice system and restorative approaches.

Children in our care placed outside Stockton on Tees:

As outlined previously, the social worker will ensure that assessment and identification of the right placement as outlined within Children's Services Bringing a Child Into our Care Policies and Procedures. Where the placement is identified outside of the local area, the social worker will ensure that the placement offers the same approach to any behaviours that could result in criminalisation as would be afforded locally.

The Social Worker will make these assurances by checking the placements relevant policies and procedures to ensure appropriate mechanisms are in place that meet in the expectations of this protocol for children and young people of Stockton. For those children placed in external

provision, there is an expectation that such provisions work with SBC in implementing this protocol and a copy will be provided from the commissioning team at point the contract is put in place and may form part of any compliance and monitoring processes.

Where a young person is subject to a youth justice intervention, the YOT and Social Care will discuss the appropriateness of any host arrangements with another YOT prior to the placement as part of the consultation process.

The YOT worker will lead any discussions with the host YOT as part of this consultation process and/or supervision process to ensure that robust arrangements can be made for the young person.

Restorative Approaches

Restorative approaches are a response to behaviours that focuses on restoring the losses suffered by victims, holding children and young people accountable for the harm they have caused, and building peace within communities.

Research from NACRO suggests that restorative justice approaches are a particularly effective way of encouraging a child or young person to realise the impact of their offence and to promote desistance. In Stockton on Tees, children's social care service has embedded restorative approaches within its children's homes.

The local authority encourages its partners to adopt restorative approaches and to this end, training is extended to staff members in other settings, stakeholders and partner agencies that provide services to children in our care or care leavers.

Virtual School

The Virtual School for Looked after Children and Young People strongly supports this policy and protocol and will endeavour to offer support and advice to education establishments in an effort to prevent the offending of LAC and Care Leaver in education establishments both in Stockton on Tees and externally.

The Virtual School will raise awareness in regards the benefits of a restorative approach in schools and education establishments. The Virtual School will challenge any education establishment where it is felt a decision taken by them places the child at risk of further criminalisation and where it is believed a restorative approach has not been considered.

The Virtual School will support education establishments to access appropriate restorative training

Monitoring and Evaluation

The operational lead for delivery will be via the Children in our Care Strategy Group.

CIOC & Care Leavers Offending Monitoring scrutiny takes place on an individual basis via care planning process including VPG which is representative of key agencies and reports directly to Stockton and Hartlepool Safeguarding Board.

Overall performance is monitored and evaluated through performance clinics within Children's Service and from within other single agencies.

The Out of Court Disposal Scrutiny Panel review a selection of anonymised cases that have been resolved by use of an out of court disposal within Cleveland. Its aim is to determine

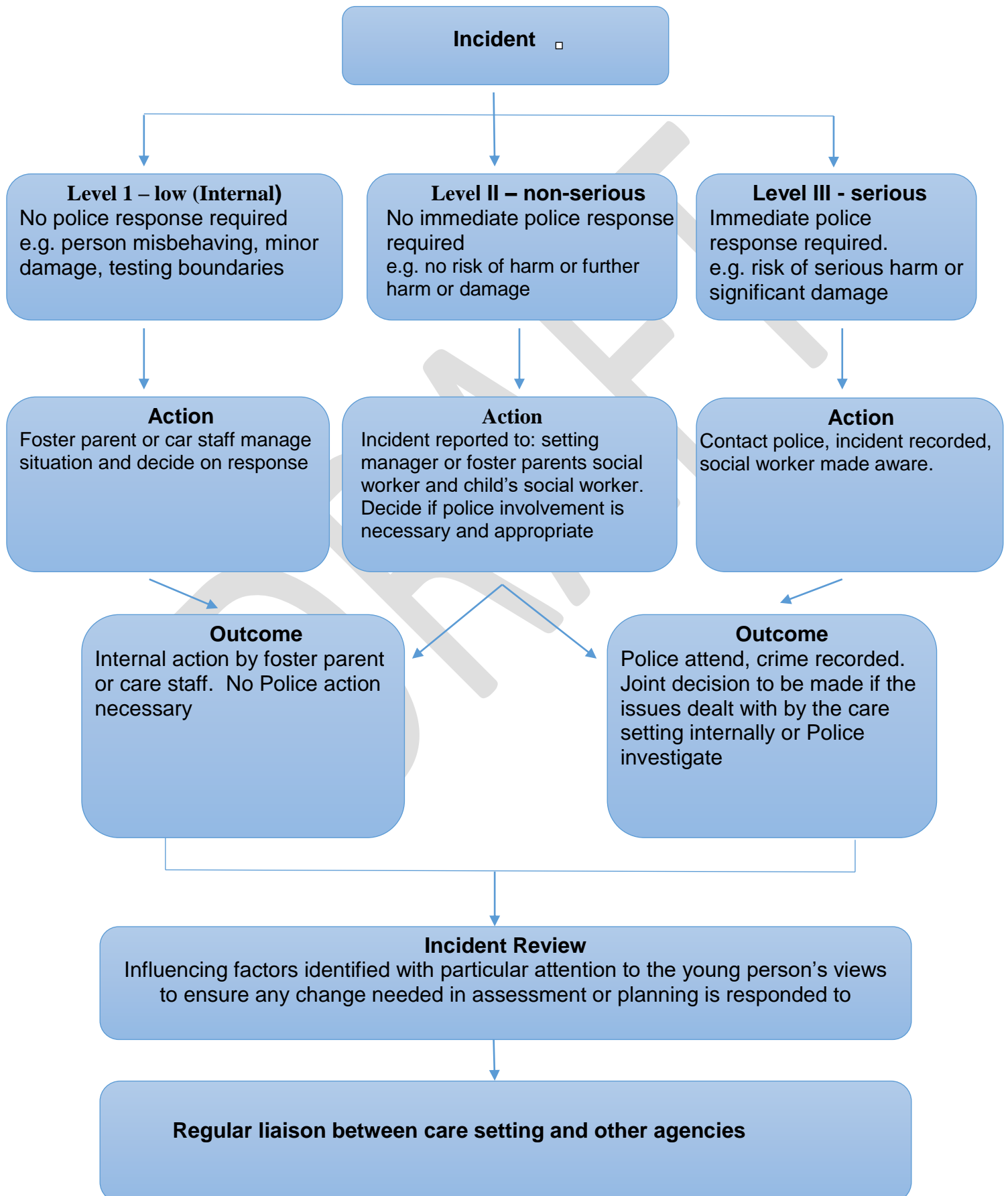
whether the method of disposal is considered appropriate, based on a review of the information/evidence available to the decision maker at the time.

Strategic Planning & Governance

The impact of this protocol will be monitored by the Corporate Parenting Board in their oversight of the Our Family, Children in Our Care and Care Leavers Strategy and through the Strategic VEMT multi agency Board.

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Annex 1: Responding to an incident



LOOKED AFTER CHILDREN AND CARE LEAVERS.

This is a guide for Police Officers when dealing with Children who are in the care of the Local Authority or who have been (Care Leavers) up to the age of 25yrs. CPS and Police have detailed policies and guidance to deal with such situations.

Prosecutors must consider all of the circumstances surrounding offending by looked- after children in Children's Homes, and, indeed, failure to do so may result in proceedings for Judicial Review (see *R v Chief Constable of Kent & Another, ex p. B (1991) 93 Cr. App. R. 416*).

In addition to this the '*National protocol on reducing unnecessary criminalisation of looked-after children and Care leavers*'. November 2018 gives the following clear guidance.

The following points MUST be considered when dealing with Looked after Children.

The Disciplinary Policy of the Home. **(If the offence has occurred in the Children's Home)**

Has it been followed correctly prior to police involvement?

An explanation from the Home regarding their decision to involve the police, which should refer to their procedures and guidance on police involvement. Is it something which falls within the Homes own disciplinary procedures? Why have police been involved in this instance?

If the attending officer feels that a community resolution / RA is appropriate then this can be progressed at this stage. OIC to evidence rationale on crime and close.

If the officer is satisfied that Police involvement is the correct way forward then additional information is required BEFORE the file is sent to CPS. (Best practice would be to include in any out of court referrals also)

1. Information from the Home about the recent behaviour of the offender, including similar behaviour and any incidents in the youth's life that could have effected their behaviour, any history between the youth and the victim (where applicable), any apology or reparation by the youth, the history of the incident and any action taken under the Disciplinary Policy of the Home regarding the incident.
2. Where applicable, the views of the victim, including their willingness to attend court to give evidence and/or participate in a restorative justice or a diversionary programme.
3. Any explanation or information about the offence from the youth.
4. The views of the Youth Offending services. key worker, counsellor or CAMHs worker on the effect of Criminal Justice intervention on the youth, particularly where the youth suffers from an illness or disorder.
5. Information from the social worker and the local Authority's assessment of his/her needs and how the placement provided by the home is intended to address them - the Local Authority should be able to provide this information as it should be an integral part of the Care Plan for the youth. The care home SHOULD keep a copy of the care plan and contact details for the allocated social worker. Social workers views on the incident / disposal should be sought.

If at any point in the investigation it becomes clear that the youth should be diverted then the case DOES NOT require CPS advice and Police should deal with this accordingly.

Once the officer is satisfied that a prosecution is necessary, all of the above information should be

included in the case file on a MG20 Renamed “**LAC CHECKLIST**”.

If any of the above information is not provided then the case will be returned to police.

LAC CHECKLIST Aide Memoire:-

10 Point Checklist.

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| 1 | If Incident occurred in the home, Discipline policy of the Home. | |
| 2 | Why have the Police been involved and is this in line with the Policy if relevant. | |
| 3 | Any informal action/disciplinary action already taken? | |
| 4 | Any apology/reparation? | |
| 5 | Victim’s views? | |
| 6 | Social Worker’s or Youth Offending views? | |
| 7 | Care Plan for Looked After Child? | |
| 8 | Recent behaviour/incidents re looked after child? | |
| 9 | Information about incident from looked after child (interview or other)? | |
| 10 | Aggravating and Mitigating Features? | |

Care Leavers Age 18-25yrs

It is recognised that many looked-after children and Care Leavers have experienced abuse and trauma, 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.

Every effort should be made to avoid the unnecessary criminalisation of looked-after children, and Care Leavers including through early intervention Restorative Justice and prevention services. Particular to Cleveland Police the Custody Divert Scheme should be a primary consideration.

Measures are in place encouraging Care Leavers to make their care leaver status known if they come into contact with the police or criminal justice agencies. To support this, Cleveland Police will flag addresses accessed by Care Leavers as provided by to Cleveland Police by Children’s Services to enable officers to prompt the question to young people who may not identify themselves as Care Leavers. This will allow support services, including their Personal Advisor, to be notified and involved in decision-making and case resolution.

Where the care leaver consents to their notification, Police and criminal justice agencies should seek and encourage the involvement of the care leaver’s former responsible authority and/or their support network in decision-making. This is regardless of whether their contact with police occurs inside or outside that authority.

Once the officer is satisfied that a prosecution is necessary, the information ascertained from above should be included in the case file on a MG20.

The following guidance is in place for SBC Children's Homes and Care Placements. The following situations are the most common ones in children's homes where police involvement might be requested:

1.1 Missing Children

If a child/young goes missing from home, staff should follow the procedures as set out in the Runaway and Missing from Home and Care Tees Protocol.

1.2 Violence by a Child or Young Person on Another

Such incidents can range from minor disagreements to serious assaults where physical injury is caused.

The home's manager should consider the following when deciding whether to notify the police:

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

1.3 Violence to Staff/Intervention Workers by a Child or Young Person

This section should be read in conjunction with [Dealing with Violent and Challenging Behaviour Procedure](#) for those children placed within SBC provision. For children placed outside of the area, this protocol should be accounted for during the commissioning process.

Violence towards staff/intervention workers can range from verbal threats to physical acts amounting to assault. Whilst each home has a responsibility of care towards young people, their welfare needs to be balanced with the rights of staff/intervention workers not to be subjected to violence in the course of their duties.

The decisions whether to report such incidents to the Police will be affected by factors similar to those listed above, and incidents should only be reported when it is agreed that they cannot be dealt with through other means. Where there is no immediate continuing threat of violence it may be in the best interests of the staff/intervention workers member to take time to discuss and consider possible options. One option could be a referral to the Youth Offending Team Youth Crime Prevention Programme. Following such incidents it is important that staff/intervention workers utilise standard de-briefing processes, and should ensure risk assessments are updated or completed in relation to the risk of violence or injury to themselves or colleagues. A professional's meeting could be a useful method by which to assess these risks and look at ways this risk could be reduced.

1.4 Criminal Damage within the Home

The majority of criminal incidents involving Police relate to damage to the children's home, and serious consideration should be given to finding alternative responses. It is important to consider whether involving the Police is an effective and proportionate response, taking into account the following:

- Level/value of damage caused;
- Previous incidents of a similar nature by the same child or young person;
- Suitability or effectiveness of Police involvement;
- Impact of Police involvement of the child's overall plan
- Message sent to other young people if applicable;
- Availability of alternative courses of action, for example referral to the Youth Offending Team.

1.5 Theft within the Home or Placement

When a young person has stolen an item in the home, or from another young person or staff/intervention workers member the following should be considered before involving the Police:

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

1.6 Criminal Damage to Staff/Intervention Workers Cars or Property

Nature and seriousness of the allegation;

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

1.7 Disorder in or Around the Home or Placement

The area of disorder is subjective and requires judgement by staff/intervention workers to avoid unnecessary Police involvement for minor infringements of discipline. The main factors that should be considered are:-

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

1.8 Substance Misuse

This section should be read in conjunction with [Drugs and Substance Misuse Procedure](#). for those children placed within SBC provision. For children placed outside of the area, this protocol should be accounted for during the commissioning process.

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

All acceptable behaviour policies held within homes should cover hate crime and make clear how staff/intervention workers and residents should deal with it. Homes should handle low level daily occurrences;

- In the recording of racist incidents the minimum data content required should be as follows:
 - Reported to: (The person receiving the report such as the registered manager, staff/intervention workers, Police);
 - At: (location reported at): (i.e. home, Police station, etc.);
 - Referred by: (the agency or other person referring the victim to the Police if the incident is being referred);
 - Time and date of report and nature of incident.

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