

# West Mercia Protocol to Reduce the Criminalisation of Vulnerable Children and Young People and in Particular those in Care or Who Have Experienced Care

## 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**

In addition to children and young people in care and those young people who have experienced care (care leavers) this local protocol also seeks to reduce unnecessary criminalisation of other groups of vulnerable children and young people including those with special educational needs or disabilities and those with mental health needs.

This is a West Mercia **local multi-agency protocol** that seeks to reduce the unnecessary criminalisation of Herefordshire, Shropshire, Telford and Wrekin and Worcestershire's vulnerable children and young people, and in particular their looked-after children and care leavers.

This protocol was agreed on..... and will be reviewed on.....

This 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 vulnerable children and young people and in particular those looked-after children and care leavers, and includes the contribution of relevant local agencies and staff. Although not an exclusive list, this includes: Local Authority Children's Services; Youth Offending Services; Crown Prosecution Service; Police; HMCTS; the local Youth Panels (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 looked-after children locally.

## Key principles

Every effort should be made to avoid the unnecessary criminalisation of vulnerable children and young people and in particular looked-after children and those who have experience care, including through early intervention and prevention services. This is in recognition that many vulnerable children and young people 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.

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 vulnerable children and young people, 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 vulnerable children, victims have a right to be protected from all types of offending. Therefore, where vulnerable 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 of looked- after children 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 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.

Children attracting a custodial sentence or remand are often the most vulnerable with multiple, over-lapping risks and needs. The Youth Justice Service 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. Accommodation and on-going support should be known and in place well in advance of their release date.

## **Prevention**

Ensuring looked-after children have the right placements that meet their identified needs will significantly contribute to prevention.

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

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.

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

## **Responding to incidents for LAC in Placements**

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.

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.

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.

Where a crime has been committed, this will be recorded by the police. The decision regarding the outcome for the young person should be made by referral to the West Mercia Joint Decision Making Panels for informed consideration for an informal or formal out of court disposal options.

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.

## **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.

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

Despite all agencies best efforts, there will be instances where vulnerable children and young people including looked-after children 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:

If a looked after child 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 looked-after status. Local authorities should therefore ensure there are viable alternatives to a child being remanded to a secure establishment.

- 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 ICTA, they should be advised and be able to attend court to further support the child.
- All local agencies/protocol partners should sign up and adhere to the **Concordat on children in custody** and seek to avoid holding looked-after children overnight in police cells where possible.
- Where a vulnerable child or young person is likely to be denied court bail the local authority will provide suitable accommodation and propose a Remand to Local Authority Accommodation in order to divert the children and young person from being remanded to Youth Detention Accommodation.
- If a looked-after child receives a community sentence, their social worker and Youth Justice Service 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.
- If a custodial sentence is likely, the Youth Justice Service 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 Youth Justice Service ahead of them preparing the pre-sentence report.

## Working together

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

## Governance

Corporate Parenting Boards have a key responsibility for ensuring their children are protected from offending and criminalisation and should ensure that work is effective across social care and with criminal justice partners to achieve this.

The Corporate Parenting Boards (or equivalent) in each of the Local Authority areas will provide governance for this protocol and seek assurance that the protocol is implemented, complied with and monitored within their area.

## Monitoring and Evaluation

Local areas must be confident that they have an accurate picture of offending by children in their care and should ensure systems are in place to identify all those who are offending whether placed within the home authority or outside.

Regular reports (annually) of number and proportion of looked after children offending will be provided to the Corporate Parenting Boards.

### **Roles and responsibilities**

The area Team Managers in the Youth Justice service will seek, wherever possible, to divert vulnerable young people, looked after children and care leavers from formal justice system outcomes through the Joint Decision Making Panels.

West Mercia Police Resilient Care Home Teams will seek to reduce missing episodes involving children missing from care homes, and assist in preventing the unnecessary criminalisation of children for offences that occur within the care environment, by participating in multi-agency fora and making relevant referrals for support and intervention.

It is in the best interests of young people to remain in their home authority wherever appropriate where they can benefit from the services of their own corporate family. Where this cannot be achieved, the local authority will seek placements as near to home as practicable, and if possible within the boundaries West Mercia should be sought.

### **Looked-after children who go missing**

Agencies who are signatories should ensure that they follow the Section 2.20 of the West Midlands Regional Safeguarding Guidance – Children Missing from Care, Home and Education:

<https://westmidlands.procedures.org.uk/pkpls/regional-safeguarding-guidance/children-missing-from-care-home-and-education>

And the West Mercia Joint Protocol:

**(link to be added here)**

Children missing are especially vulnerable to exploitation, and where this results in criminal behaviour, agencies should treat such children and young people as victims of exploitation and not as offenders, and divert the young person away from a formal justice system response. Where the criteria are met a NRM referral will be made.

**(link to NRM to be added here)**

### **Information sharing**

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. Further information regarding information sharing and data protection is attached at appendix 1.

### **Crown Prosecution Service (CPS) response**

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.

## **Appendix 1 – Information Sharing**

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

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 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.