



A Joint Protocol To Reduce the Prosecution of Looked After Children

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Foreword

Since July 2013 I have been to 16 schools and I have been in 15 different placements all around the country.....All of my offending has been whilst being in care.

Young review panel member, aged 15 years, 25 June 2015

These children are in our care; we the state are their parents-and what are we setting them up for....the dole, the streets, an early grave? I tell you: this shames our country and we will put it right.

The Rt.Hon. David Cameron MP, Prime Minister, October 2015

1. Background

Most children who experience care do not get into trouble with the law. However, children and young people who are, or have been in care are over five times more likely than other children to get involved in the criminal justice system. In a 2013 survey of 15-18 year olds in young offender institutions, a third of boys and 61% of girls said they had spent time in care.

The links between being a looked after child and offending behaviour are well established (Schofield *et al.*, 2012). Whilst the reasons behind this are varied and complex, it is important not to make the simple assumption that the experience of 'being in care' in and of itself increases the likelihood of offending behaviour. Instead it is important to recognise that many of the 'risk factors' associated with pathways into offending behaviour also overlap with the factors identified for children who enter the care system, for example;

Conflict within the family, poor parental supervision, attachment problems, living in relative poverty/deprivation, low achievement and low commitment to education, negative influence of peer group.

(Hayden, 2012)

It is important that all children and young people feel safe in the place that they live, whether that is in a family home or children's home and that they have confidence in the criminal justice system to intervene and protect them where it is necessary.

As 'corporate parents', Staffordshire County Council and Stoke on Trent City Council want the best possible outcomes for all of our looked after children and young people and this includes reducing the likelihood of their becoming involved in offending behaviour. Whilst recognising that our children and young people often have a range of complex needs and behaviours that can make them vulnerable to becoming involved in the criminal justice system, the over representation of looked after children in the youth justice system must be challenged and changed.

Staffordshire County Council and Stoke on Trent City Council are committed to a multi-agency approach in order to support children and young people to achieve the best outcomes, to divert them away from criminal and anti-social behaviour, to prevent reoffending, the escalation of offending, and to prevent them from being inappropriately criminalised. It is also vital to include in this protocol and recognise how the Early Help/Prevention strategy and restorative justice approaches can be so much more fruitful and rewarding in the longer term, thereby requiring all agencies to work effectively

together to ensure that the investment in childhood and early adolescence remains a priority for all local authorities charged with the care of children and young people. It should also be recognised that there is a need to prepare young people for the changes that occur once young people become care leavers at which point this protocol no longer applies, thus behaviour which is dealt with without prosecution pre 18 will very likely result in prosecution post 18.

1.1 A joint protocol to reduce the prosecution of looked after children

This document has been approved and adopted by Staffordshire Safeguarding Children Board, Stoke on Trent Safeguarding Board and the Staffordshire and Stoke on Trent Youth Offending Management Boards. As such, it supersedes previous local policy and procedures retained within individual documents.

1.2 Restorative approaches

A restorative approach is the process bringing together victims and offenders in order to establish what happened, who was harmed and to work out what can be done to make things better. We believe that using restorative approaches in the first instance can provide a longer term benefit and handled in the right way, a crisis might be short lived and restored. It is therefore fundamentally important that consideration be given to seeking a restorative solution as a primary outcome where possible and appropriate.

2. Introduction

This protocol is based upon the plethora of good practice already in place across Staffordshire and Stoke on Trent to meet the needs of Looked After Children within residential care homes and foster care placements. This protocol has been reviewed not only to reinforce and extend such practice and to contribute to a culture of continuous improvement, but to make reference to the independent review chaired by Lord Laming: In Care and Out of Trouble.

It is anticipated that the standards and guidance contained within the protocol will act as a framework for ensuring best practice for Looked After Children across Staffordshire and Stoke on Trent.

The protocol aims to strike a balance between the rights and needs of the children and young people, the rights of staff and foster carers and the decision to instigate police action.

The protocol underlines the importance of regular and effective liaison between care staff and managers, social workers and managers, Staffordshire and Stoke on Trent Youth Offending Service staff including those based in Stoke on Trent, local policing team inspectors, neighbourhood police officers and youth specialist prosecutors.

2.1 Information exchange

This protocol is agreed within the context of the provisions of the Data Protection Act and Crime and Disorder Act 1998, Section 115 (see guidance at Appendix A).

3. Reasons to Consider Police Involvement

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. All residential homes should identify designated managers and verify Police involvement, except in life threatening situations. It is crucial that communication between residential care home staff, foster carers and the Police regarding an incident is clear and evidence based.

The following situations are the most common ones in children's homes where Police involvement might be considered:

3.1 Violence by a child or young person on another

These are incidents between residents within the home which range from minor disagreements through to serious assaults where physical injury is caused. Such incidents can be complicated by having two vulnerable parties.

3.2 Violence to staff or foster carers by a child or young person

Violence towards staff members or carers can vary from verbal threats to physical acts amounting to assault. Whilst each home and placement has the responsibility of care towards the young people, their welfare needs to be balanced with the rights of staff and carers not to be subjected to violence in the course of their duties.

Staff and carers should be encouraged to report any incidents that cannot be dealt with through restorative approaches as discussed previously, and behaviour management strategies.

This can include a referral to Staffordshire and Stoke on Trent Youth Offending Service prevention teams and/or neighbourhood police officers: this will be underpinned by consideration about the appropriate intervention. If the young person is currently supervised by the youth offending service, information should be shared with the relevant area youth offending team. This however, does not remove the individual's right to involve the police. Any decision to involve the police in such circumstances needs to be carefully thought through to ensure it achieves the best outcome for the staff member and the young person. Following such incidents it is important that staff and carers utilise standard de-briefing processes.

Staff and carers should also ensure risk assessments and behaviour management strategies/plans are updated or completed in relation to the risk of violence or injury to themselves or colleagues. A professionals meeting could be a useful method by which to assess these risks and look at ways the risk could be reduced.

3.3 Criminal damage within the home or placement including damage to carer's property

The majority of criminal incidents involving police relate to damage to the children's home or placement. It is important to see the negative behaviour in the context of the needs of the child and whether involving the police is an effective and proportionate

response. Information contained in the behaviour management plan should inform decisions to involve the police.

3.4 Theft within the home or placement

The full factors should be considered in the context of a restorative approach, the wishes of the victim, nature and seriousness of the allegation, requirement for formal investigation, e.g. insurance claim requires a crime reference report, strategies identified in the young person's behaviour management plan.

3.4 Disorder in or around the home

The area of disorder is subjective and dependant on the nature and seriousness of the disorder, the risk of violence, the wishes of and impact on the immediate community, and the availability of alternative courses of action i.e. restorative approaches. Information contained within the behaviour management plan should inform decisions to involve the police.

4. Categories of Response

It is recognised that caring for and managing young people with difficult or challenging behaviour is an integral feature of residential and foster care work. Carers will generally manage problematic situations except where they are so severe that immediate police involvement is essential in order to avoid physical assault or damage. The protocol identifies two categories:

- internal not serious
- internal serious

A flow diagram is listed at Appendix B.

4.1 Internal not serious incidents

An incident where no immediate police response is required, for example where an assault or damage has occurred and there is no risk of further incident/significant harm to people, or incidents of theft. The incidents should be reported to the registered manager. Staff within the home should inform the child/young person's social worker at the first opportunity who will inform relevant agencies working with that young person.

It is important to avoid any unnecessary reporting of incidents to the police. Should the registered manager decide and/or the victim wishes that formal police involvement is necessary, contact should be made with the neighbourhood police officer via regular liaison.

4.2 Internal serious incidents

Incidents of violence requiring an immediate police response where children / young persons or staff are at risk of:

- immediate serious physical harm
- significant disorder within the care home or placement

In such situations the senior member of staff on duty should contact the police using the 999 system. Prior to this, the home should have referred to its own behaviour management strategy and exhausted its own resources. Foster carers should also use the 999 system in these situations and contact the Emergency Duty Service for further support.

4.3 Liaison

The **primary** police involvement in children's homes should be through the neighbourhood police officer who will meet with staff on a regular basis. Whilst some officers may already perform this duty it must be emphasised that a good working relationship is the most effective way to respond to young people with difficulties.

Best practice calls for regular liaison with the police service in order to discuss ongoing issues and the appropriate method of resolution:

Carers will have regular liaison with social workers and participate in strategy meetings to address issues.

5. Recording of Incidents

5.1 Recording of incidents in children's homes

All incidents involving criminal behaviour or the suspicion of criminal activity should be recorded in accordance with the Children's Homes Regulations and Quality Standards 2015. In the event of an allegation relating to a serious offence and incidents that necessitate the police being called to the children's home, notifications must be given in accordance with Regulation 40.

In all instances, concerns relating to a child's offending behaviour, or suspected offending behaviour should be shared with the registered manager and the child's social worker at the earliest opportunity. Consideration must be given to a referral to Staffordshire and Stoke on Trent Youth Offending Services prevention teams.

5.2 Recording of incidents by foster carers

Foster carers should record events and concerns in relation to children and young people in their care in accordance with the fostering services: National Minimum Standards (2011) – Standard 26. In the event of an allegation relating to a serious offence and incidents that necessitate the police being called to the foster home, notifications must be given in accordance with Regulation 36, Schedule 7 of the Fostering Services Regulations (England) 2011.

In all instances, concerns relating to a child's offending behaviour, or suspected offending behaviour should be shared with the fostering social worker and the child's social worker at the earliest opportunity. Consideration can be given to a referral to Staffordshire and Stoke on Trent Youth Offending Services prevention teams.

6. Staffordshire and Stoke on Trent: Approaches to Offending Behaviour in Children's Homes – Decision Making

As a consequence of the introduction of the Legal Aid Sentencing and Punishment of Offenders Act 2012, the police have the power to deal with low level offending behaviour where there is an admission of guilt, via an out of court disposal, namely a community resolution. On most occasions the disposal can be followed up with a referral to the local youth offending team where the young person has indicated a willingness to co-operate. Included in any lower level intervention following the delivery of a community resolution can be a restorative approach which can prove to be effective at reducing similar behaviours in the future. Such measures will go some way to tackle the over representation of looked after children in the criminal justice system.

6.1 General information

It remains that the police are significantly more likely to be called to a children's home than a domestic setting to deal with an incident of offending behaviour by an adolescent. All decision makers should bear this in mind when dealing with incidents that take place in a children's home.

In many cases offences committed in children's homes by young people may be dealt with informally by the police officer called to the incident. These disposals are called community resolutions and may include referrals to other agencies.

The decision to prosecute Looked After Children for offences committed within a placement is a major decision and should be taken by a youth specialist.

The guidance referred to in the foreword should be considered in conjunction with the code for Crown Prosecutors, CPS policies, statements and legal guidance.

6.2 Resolution of incidents by the police

Police decision makers are encouraged obtain as much information as possible to inform any decision to deal with a matter by way of community resolution.

Where community resolution is inappropriate cases should be referred to Staffordshire or Stoke on Trent Youth Offending Service.

Restorative justice conferencing, reparation, acceptable behaviour contracts and disciplinary measures by the home may be sufficient to satisfy the public interest and to reduce the risk of future offending. Both youth offending services are willing to support children's residential homes with reducing offending behaviour in the home where the enquiry is made by the residential home.

Community resolutions are the sole responsibility of police officers and their supervisors in terms of decision making. It should be noted that whilst victims and their carers will be consulted, it is for the police to decide the appropriateness of a community resolution.

A criminal justice disposal, whether a prosecution or out of court disposal such as a youth caution or youth conditional caution, should not be regarded as an automatic response to offending behaviour by a looked after child, irrespective of their criminal

history.

This applies equally to a persistent offender and adolescents of good character. A criminal justice disposal will only be appropriate where it is clearly required by the public interest. Decision makers should always consider a community resolution where it is appropriate to do so.

7. Prosecution of Incidents by Crown Prosecution Service

7.1 The decision to prosecute

Where a charge is considered to be the appropriate action youth specialists should consider all the circumstances surrounding the offence and the circumstances of the child/young person before reaching a decision, and apply all relevant CPS policies.

Factors that should be considered include:

- Behaviour management policy of the home
- An explanation from the home regarding their decision to involve the police
- Information from the home about the recent behaviour of the child or young person including similar behaviour, any incidents in the child or young person's life which could have affected their behaviour, any history between the child/young person and the victim, any apology or reparation, history of the incident and any action taken under the disciplinary policy of the home
- Views of the victim, including their willingness to attend court to give evidence and/or participate in a restorative justice or other diversionary programme
- Views of the key worker, social worker, or CAHMS worker on the effect of a criminal justice intervention on the child or young person
- Any explanation or information about the offence from the child or young person
- Provided the child or young person wishes it to be considered, information about the local authority's assessment of his/her needs and how the placement provided by the home is intended to address them

Aggravating and mitigating factors should be considered when deciding on the appropriate outcome. Aggravating factors include:

- The offence is violent or induces a genuine fear of violence in the victim
- The offence is sexual
- The offence is motivated by hostility based on gender, sexuality, disability, race, religion or ethnicity of the victim
- The victim is vulnerable
- The damage or harm caused is deliberate and cannot be described as minor
- The offence forms part of a series of offences
- Informal measures have been ineffective in preventing offending behaviour

Mitigating features include:

- The damage or harm caused is at the lower end of the scale and has been put right
- Appropriate action has already been taken under the disciplinary procedure or other informal disposal
- Genuine remorse and apology to victim
- The behaviour is a symptom of a disorder or illness that cannot be controlled by

- medication or diet
- Isolated incident or out of character
- The child or young person is under extreme stress or appears to have been provoked and has over-reacted

The reasons for the charging/diversion decision should be clearly recorded to show the factors that have been considered by the youth specialist to determine how the public interest is satisfied by a criminal justice disposal.

8. Behaviour Management Policies

Children's Homes Regulations 2015 state that each home must have a written Behaviour Management Policy that sets out the measures of control, restraint and discipline which may be used in the children's home and the means whereby appropriate behaviour is to be promoted in the home. Fostering Regulations 2011 state that each fostering service must have a written policy on acceptable measures of control, restraint and discipline placed with foster carers. A copy of this policy and a statement from the home setting out how the policy has been applied to the particular incident should accompany any request for advice on charging.

9. Monitoring

To evaluate compliance with this protocol a review meeting should be held between the police, Staffordshire and Stoke on Trent Youth Offending Services, children's home providers, targeted youth support and the Crown Prosecution Service.

The monitoring of this protocol is the responsibility of regulated services for Looked After Children. Annual reviews will involve all relevant stakeholders.

Signed:
Print: RICHARD HANCOCK
Date:
Head of Families First and Deputy Director of Children's Services, Staffordshire County Council

Signed:
Print: MARK WARR
Date:
Assistant Director, Children's Social Care, Stoke on Trent City Council

Signed:
Print: EMMA BARNETT
Date:
Assistant Chief Constable, Staffordshire Police

Signed:
Print: GRACE ONONIWU, OBE
Date:
Chief Crown Prosecutor, Staffordshire Crown Prosecution Service

Appendix: A The Crime and Disorder Act 1998

Crime and Disorder Act – guidance on information sharing:

The following guidance on information sharing between agencies under section 115 of the Crime and Disorder Act 1998 was issued in November 1998 in a joint statement by the Home Office and Data Protection Registrar:

Before public or statutory bodies can disclose information, they must first establish whether they have power to do so and/or whether they have a responsibility to do so. Once the question of power is resolved, they must carry out the disclosure in a lawful manner.

The power to disclose:

The police have an important and general power at common law to disclose information for the prevention and detection of crime; both the public and the Government expect them to use their powers and their knowledge to prevent crime and to reduce crime and disorder. There are no restrictions on the disclosure of information which does not identify individuals.

The Crime & Disorder Act 1998:

The Act introduces a number of measures to control crime and disorder, all of which depend on close co-operation, including the proper exchange of information:

- Section 17: duty to prevent crime and disorder;
- Sections 6&7: formulating and implementing strategy;
- Section 39: youth offending teams;
- Section 1: anti-social behaviour orders;
- Section 2: sex offender orders;
- Section 15: local child curfew schemes;
- Section 16: contravention of child curfew notices.

Public bodies collect information, which will be central to the Act's partnership approach; but they may not previously have had power to disclose this information to the police and others. Section 115 provides that any person can lawfully disclose information 'for the purposes of the Act' to the police, local authorities, probation service or health authority (or persons acting on their behalf), even if they do not otherwise have this power.

Section 115 ensures all agencies have a power to disclose: it does not impose a requirement on them to exchange information, and so control over disclosure remains with the agency which holds the data. Information exchange, whether carried out under the power in section 115 or under any other common law or statutory power, is therefore controlled by the normal data protection regime and common law. The public rightly expects that personal information known to public bodies will be properly protected. However, the public also expects the proper sharing of information, as this can be an important weapon against crime. Agencies should, therefore, seek to share information where this would be in the public interest.

Lawful Exercise of the Power to Disclose:

Any disclosure of personal data must have regard to both common and statute law, for example defamation, the common law duty of confidentiality, and the data protection principles - unless and to the extent that any Data Protection Act exemptions apply. The principles require that such information is obtained and processed fairly and lawfully; is only disclosed in appropriate circumstances; is accurate, relevant, and not held longer than necessary and is kept securely.

The best way of ensuring that disclosure is properly handled is to operate within information sharing protocols carefully formulated by the agencies involved. Section 115 of the Crime and Disorder Act 1998 can be used to reinforce the many and existing and successful protocols for the sharing of information for crime and disorder purposes between, for example, the police and probation service. The Home Office and the Office of the Data Protection Registrar have issued guidance on the preparation and use of protocols.

Further guidance may be obtained from the Criminal Policy Strategy Unit at the Home Office or the Compliance Manager at the Office of the Data Protection Registrar

Legal Aid, Sentencing and Punishment of Offenders Act 2012:

Sections 135 – 138 outline guidance for the use of out of court disposals.

Concordat on Children in Custody: Home Office:

Preventing the detention of children in police stations following charge.

A night in a cell is an intimidating experience. Police custody facilities are designed to detain adults suspected of criminal activity, they offer little in the way of comfort or emotional reassurance. Children taken into custody are in a particularly vulnerable position, not only because of their age, but also because of the circumstances which brought them into contact with the police.

The law recognises that police cells are not a suitable place for children. The Police and Criminal Evidence Act 1984 (PACE) requires the transfer of children who have been charged and denied bail to more appropriate local authority accommodation with a related duty in the Children Act 1989 for local authorities to accept these transfers.

In 1991, the UK ratified the UN Convention on Human Rights agreeing that custody be used “only as a measure of last resort and for the shortest appropriate period of time”.

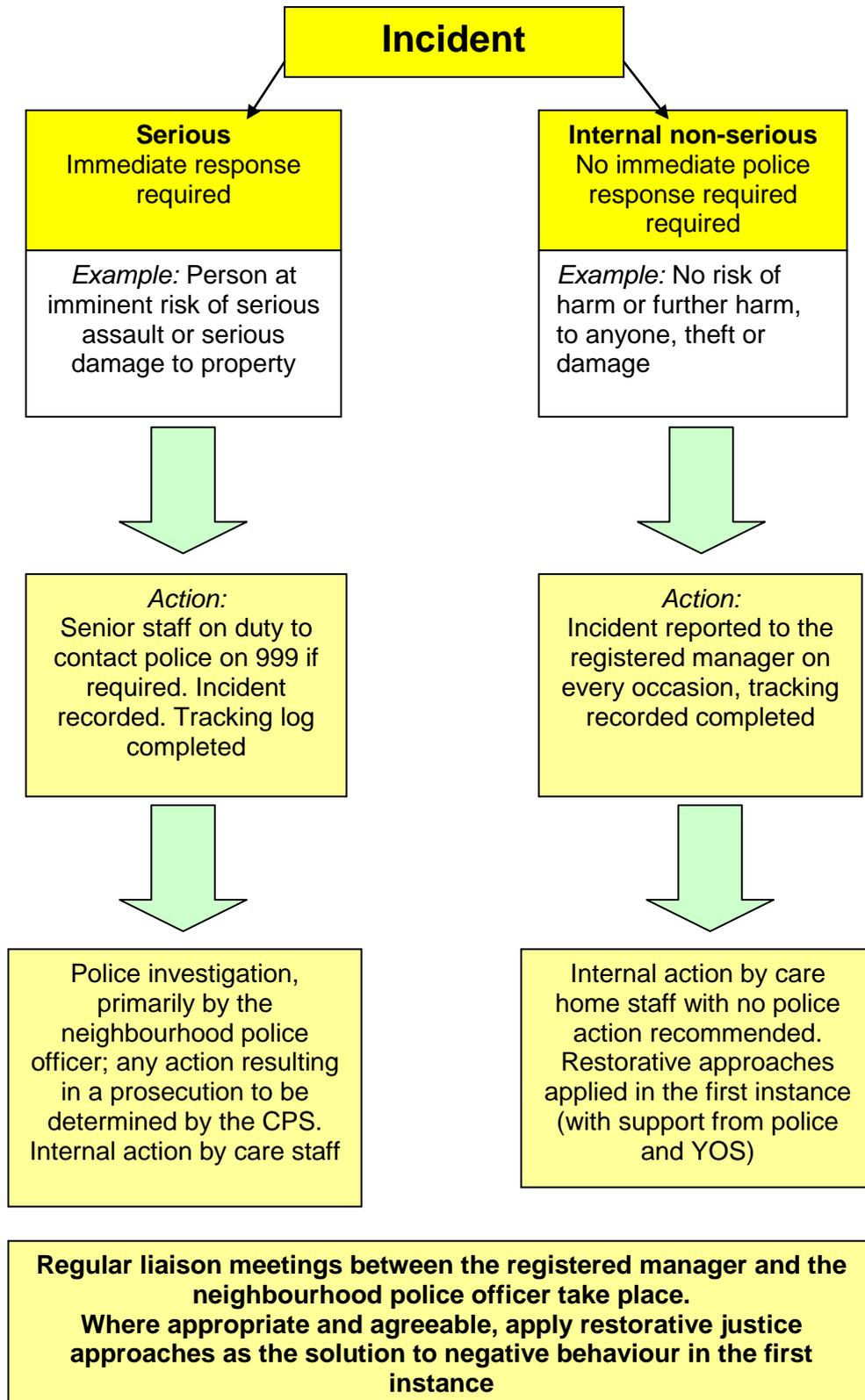
Whilst this protocol addresses the over representation of Looked After Children in the criminal justice system and is aimed at encouraging and further developing the good practice in place in Staffordshire and Stoke on Trent, the same has to be said for preventing the detention of children in police stations following charge.

Work is underway to progress a Staffordshire and Stoke on Trent Concordat on Children in Custody which will be aligned to this protocol.

Appendix B

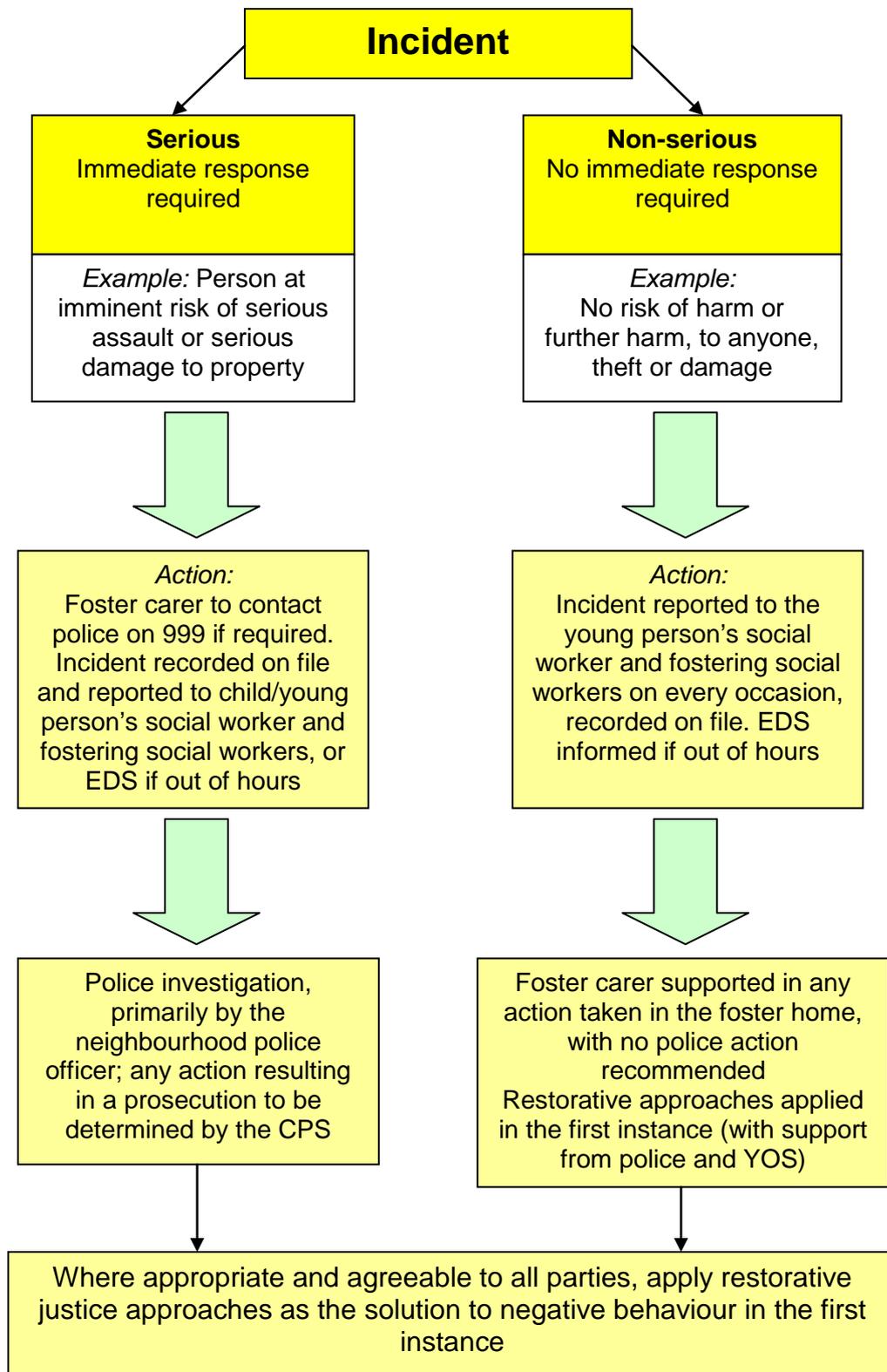
Children's Homes Categories of Response

This process must be followed when any member of staff is considering contacting the police and takes into account whether or not a restorative solution can be applied as a more desirable outcome.



Foster Carers Categories of Response

This process must be followed when a foster carer is considering contacting the police and takes into account whether or not a restorative solution can be applied as a more desirable outcome in the first instance.



Appendix C – Links and Reference Sheet

References:

Department for Education (2011) *Fostering services (England) Regulations 2011*.

Hayden, C. (2010) 'Offending behaviour in care: is residential care a 'criminogenic' environment?', *Child and Family Social Work*, Vol. 15, pp 461-472.

Schofield, G., Ward, E., Biggart, L., Scaife, V., *et al.* (2012) *Looked After Children and Offending: Reducing Risk and Promoting Resilience*, University of East Anglia.

Social Exclusion Unit (2002) *Reducing offending by ex-prisoners*, London: SEU.

Youth Justice Board (2008) *Education, Training and Employment*, London: YJB.

In Care, Out of Trouble: An independent review chaired by Lord Laming: Prison Reform Trust (May 2016).

Useful Links:

Children's Homes Regulations (2011) <http://www.legislation.gov.uk/uksi/2011/583/made>

The Crime and Disorder Act 1998 <http://www.legislation.gov.uk/ukpga/1998/37/contents>

Legal Aid, Sentencing and Punishment of Offenders Act 2012 <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

Fostering Services: National Minimum Standards (2011) – Standard 26 <https://www.education.gov.uk/publications/eOrderingDownload/NMS%20Fostering%20Services.pdf>

Children's Homes - National Standards <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00030-2011>

National Minimum Standards: Fostering Services <https://www.education.gov.uk/publications/standard/Adoptionandfostering/Page1/DFE-00029-2011>

Appendix D – Glossary

Admissible evidence

Any testimonial, documentary, or tangible evidence that may be introduced to a judge or jury is called admissible evidence. It is used to establish or to strengthen a point put forward by either the defence or prosecution in the proceedings.

The submitted evidence is only admissible if it is relevant (not all evidence introduced by the parties may be allowable in court), is must not be prejudicial, and it must be reliable.

Aggravating circumstances (see also mitigating circumstances)

Commonly used in court and in police decision making, these are circumstances associated with an offence that make it viewed to be more serious.

An example would be; around the offence of dwelling house burglary - that the offence was committed at night, when the house was occupied, and if the victim was vulnerable e.g. elderly. Mitigating circumstances (referred to later) are the opposite.

Alcohol abuse

Is the drinking of alcoholic drinks to the excess; this could be either on individual occasions (binge drinking) or as a regular practice.

A young person's offending behaviour could be connected with the use of alcohol, contributing to risk-taking behaviours, role impairment, relationship or legal problems.

Apology

Is a written or spoken statement that tells someone that the perpetrator is sorry for doing something wrong or for causing a problem/harm. It is used to express a person's regret and remorse.

Behaviour management

Behaviour management captures the processes and policies by which establishments manage challenging and difficult behaviour and promote positive behaviour amongst young people in the secure environment.

Helping young people understand their own behaviour and what makes them offend, offering ways of changing their behaviour.

Corporate parent

The whole Council / elected members are 'corporate parents' to all the children who are looked after. The Council, as a whole, need to actively promote 'our' children's life chances by providing loyal support similar to what good parents would, ensuring 'our' children get a good start in life; all aspects of children's development should be nurtured.

Crown Prosecution Service

The Crown Prosecution Service (CPS) is a non-ministerial department of the Government of the United Kingdom, responsible for public prosecutions of people charged with criminal offences in England and Wales.

Disorder

A breach of civic order or peace. A disturbance that shows serious risk of escalation causing harmful impact on self, others or community.

Mitigating circumstance (see also aggravating circumstances)

A term used in the criminal justice system used to describe circumstances surrounding an offence which tend to make the offence be deemed less serious. An example might be where an offence of assault has been committed but the person responsible for the assault was, prior to the offence, subject to considerable provocation.

Neighbourhood police officer

These are officers who are dedicated to working in designated neighbourhoods and who

are not abstracted to duties elsewhere unless in extraordinary circumstances. They are familiar and accessible to their local community, helping to identify local priorities and working with residents and partner organisations such as the local authority to find solutions to local crime and disorder problems.

Diversion / out of court disposals

A policy development which concludes that it is worthwhile to attempt to divert young people from entry into the criminal justice system. Once within the criminal justice system young people may perceive themselves as offenders and act accordingly.

Sanctions are implemented in an effort to reduce the risk of children entering the criminal justice system. Examples of diversionary approaches are community resolutions, youth cautions and youth conditional cautions.

Staffordshire/Stoke-on-Trent Youth Offending Service staff

A member of the youth offending service who may be a case manager or a youth crime prevention worker seeking to prevent young people becoming involved in anti-social behaviour /offending behaviour / reducing reoffending.