

# MAYOR OF LONDON

OFFICE FOR POLICING AND CRIME

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Reducing criminalisation  
of looked-after children  
and care leavers

## **A PROTOCOL FOR LONDON**

# Acknowledgements

This protocol has only been possible thanks to the support of the stakeholders who have helped co-produce it. The Mayor's Office for Policing and Crime would like to thank them for their help with the development of the protocol.



**MAYOR OF LONDON**

OFFICE FOR POLICING AND CRIME



DRIVE FORWARD



Youth Justice Board  
Bwrdd Cyfiawnder Ieuencid



Magistrates Association

**Howard League  
for Penal Reform**



**Haringey  
LONDON**



Standing up for kids  
**JUST FOR KIDS**  **LAW**

**ALDCS**

Association of  
London Directors of  
Children's Services

**The  
Children's  
Society**

# Contents

Executive Summary	5
1. Introduction	6
2. About this Protocol	10
3. Key Principles	11
4. Voice of the child	15
5. Prevention	17
6. Responding to incidents	20
7. Illegal substances	25
8. Child Exploitation	27
9. Police roles and responsibilities	30
10. Prosecution of incidents in children's homes	32
11. Support for looked-after children in contact with the CJS	34
12. Missing children	36
13. Recording of incidents by carers	38
14. Placements out of area	40
15. Diversion and restorative justice	42
16. Needs of carers	44
17. Governance and Monitoring	45
18. Review	46
19. Signatories	46
20. Appendices	47

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## Executive Summary

The majority of looked-after children and care leavers have experienced adverse childhood experiences and trauma. With placement moves and education disruption, looked after children are less likely to have consistent, healthy and meaningful relationships with adults who are supportive and loving.

Without these relationships, children and young people in care are often left hugely vulnerable to criminal and sexual exploitation and the use of illegal substances. As a result, sadly, they are more than twice as likely to be cautioned or convicted of an offence compared to their peers. With less than one per cent of children in England entering the care system, half of the children detained in Youth Offending Institutes are, or have been, within the care system.

Looked-after children and care leavers from Black and minority ethnic backgrounds are at an even bigger disadvantage. More than half of the children in prison are or have been in care, with over half of them being from Black and minority ethnic backgrounds.

This is unacceptable to the Mayor and the Mayor's Office for Policing and Crime. To address this, MOPAC has worked with partners to produce a new protocol for London on reducing criminalisation of looked-after children and care leavers, with the experiences of the young people effected at the heart of its development.

As a city, we should strive to ensure that the automatic response to a crime committed by a looked-after child is not a criminal one. Instead, we need all partners within the criminal justice system to promote alternative and restorative approaches to avoid unnecessary criminalisation of these young people.

This protocol sets out the roles and responsibilities of each group involved in the care of looked-after children and care leavers in reducing their involvement in crime – because each and every one of these groups has their part to play in protecting these vulnerable young people from a life of crime. This includes children's home carers, foster parents, police officers, the Crown Prosecution Service, health services and local authorities.

The organisations who have signed up to this protocol have agreed to the following key principles:

- Diversion from the criminal justice system should be at the heart of any response to offending behaviour
- Listening to and learning from children and young people
- Agencies should be asking themselves 'would this response be good enough for my child?'

Through this protocol, we will be able to work better together, across our city, to reduce the number of young people who have been within the care system from falling into a life of crime, and instead divert them instead towards a more positive future.

# 1. Introduction

**1.1** The care system exists to help children who have faced real adversity to heal and set out into adulthood equipped to thrive. It is difficult to overstate the challenges that can come with supporting some of the most disadvantaged and traumatised children in our society, and the debt of gratitude we have to all of those working with these children.

**1.2** In some cases, these challenges can include criminal behaviour of varying degrees of severity. Adverse childhood experiences and on-going trauma experienced by individual children and young people may be a contributing or causative factor to such offending behaviour. There is a complex interplay of factors which account for the criminalisation of children living in residential care. The children themselves will have suffered a range of disadvantage, trauma and vulnerability that potentially increase the likelihood of behaviour that might lead to police contact; Being in care can either be a protective factor which reduces the likelihood of criminalisation or it can increase the likelihood of police involvement. Failings in the care system and in the care, children receive can intensify, create and promote criminal behaviour as well as unnecessary recourse to the police.

**1.3** Although statistics show high levels of children in care becoming involved in committing crimes, they also are more vulnerable to becoming victims of crime. This victimisation can lead to an engagement in crime, for

example, children may become involved in criminality as a result of sexual or criminal exploitation. Responding to such incidents requires striking a difficult balance, between addressing the immediate situation and protecting the safety and ensuring the welfare of the child, protecting care workers and society; and the long-term impact of a criminal justice intervention on the life chances of the child.

**1.4** While a criminal justice intervention might resolve an immediate problem, it can create further problems over the long term that ultimately undermine the ambitions of the care system. Having a criminal record can affect employment, education, access to finance, housing, insurance and the ability to travel internationally. It can affect people's mental and physical health and it can impact on relationships through adulthood. For someone who is, or has been, in care, a criminal record can compound all the other difficulties they have to overcome.

**1.5** There are a broad range of experiences which can constitute criminalisation, from receiving an official sanction to more informal forms of criminalisation, such as increased contact with the police which can make a child more likely to have further contact with the criminal justice system. This protocol covers both formal and informal criminalisation.

**1.6** Recognising the need to prevent criminalisation of children and young people as far as is possible, over the past ten years, huge strides have been

made to keep children out of the criminal justice system. In 2010, there were over 250,000 children arrested nationally; this number had fallen by over 70 per cent to under 75,000 in 2019<sup>1</sup>. In just one year between 2017 and 2018 the Metropolitan Police Service reduced levels of child arrests in London by 22 per cent, demonstrating how progress can be made in challenging circumstances<sup>2</sup>. The work done by the police and others to prevent unnecessary arrests has been pivotal to the corresponding reductions in the numbers of children in prison, which fell by 64 per cent between March 2010 and March 2019<sup>3</sup>.

**1.7** The UN Convention on the Rights of the Child, which the UK ratified in 1991, applies to all children aged 17 years and under. Article 3 states that in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. The UN Committee on the Rights of the Child has also been clear that “Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults”<sup>4</sup>.

**1.8** Some groups of children have not benefited as much from these advancements as others, however. Children in care and care leavers continue to be more likely than other children to come into contact with the criminal justice system. Although, there has been a drop in the amount of young people within the criminal justice system, this has been the opposite for BAME young people. The Lammy Review states ‘the BAME proportion of youth prisoners has risen from 25% to 41% in the decade 2006-2016’<sup>5</sup>.

**1.9** In 2015, four per cent of children in care were convicted or subject to a caution or conditional caution, compared to one per cent of all children. The risk of being criminalised was higher still for children in residential children’s care, 14 per cent of whom were criminalised that year (compared to 1% of all children).

**1.10** In 2019, the proportions of children in residential care receiving a criminal record had come down to seven per cent, with three per cent of all children in care convicted or subject to a caution or conditional caution.

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1. Howard League for Penal Reform (2020) Child arrests 2019. London: Howard League for Penal Reform

2. Howard League for Penal Reform (2020) Child arrests 2019. London: Howard League for Penal Reform

3. Youth Justice Board/ Ministry of Justice (2020) Youth Justice Statistics 2018 to 2019. London: HM Government, Table 7.10

4. UN Committee on the Rights of the Child (2019) General Comment No. 24 on children’s rights in the child justice system.

5. Lammy Review (2017) The Lammy Review. An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System. London: The Lammy Review.

*Other statistics used above are drawn from MoJ Quarterly Criminal Justice Statistics Quarterly 12 months ending September 2019 and Home Office Arrest Statistics open data 2018-19*

**1.11** In 2018/19, over 80 per cent of children who received a criminal record whilst in residential care were recorded as having been missing from placement at least once. 11 per cent of all children in care who were criminalised that year were reported missing at some point during the year. There is a complex relationship between missing incidents and criminalisation which is looked at in detail in Section 12.

**1.12** Care leavers and looked-after children continue to be disproportionately represented in prison. Studies suggest that at least one quarter of the adult prison population has experienced care as a child<sup>6</sup>.

**1.13** Looked-after children and care leavers from Black and minority ethnic backgrounds face a compounded disadvantage. More than half of the children in prison are or have been in care and over half are from Black and minority ethnic backgrounds<sup>7</sup>. The Lammy Review into the Treatment of and Outcomes for Black and Minority Ethnic Individuals in the Criminal Justice System found evidence of racism and over-representation at all stages of the youth and adult criminal justice systems. BAME children are more likely to be arrested, less likely to receive Out of Court Disposals and receive more punitive outcomes in courts.

**1.14** In response to this over-representation, the Mayor's Office for Policing and Crime has collated a multi-agency action plan to tackle ethnic disproportionality in London's youth justice system, which features actions from criminal justice agencies, including

the police, Youth Offending Teams, CPS and Youth Custody Service, aimed at reducing over-representation and ensuring fair and equal outcomes at each part of the CJS. This action plan builds on ongoing work across the youth justice system to tackle disproportionality.

**1.15** We know that statistics and insights like these do not represent the complete picture, as the Government collects this data only on children who have been in care for 12 months or more which constitutes around 50 per cent of children.

**1.16** What is clear is that responses by carers and other agencies to children's difficulties can cause, contribute to or exacerbate this problem. That could include, for example, carers calling the police unnecessarily for a minor incident; schools excluding children when not a matter of absolute last resort; physical and mental health services not providing the full support children need to resolve underlying concerns; and criminal justice agencies missing opportunities to divert rather than entrench young people in the justice process.

**1.17** With children and young people in some of the most difficult, complex and traumatic circumstances, it is a hugely challenging and complex task. It is incumbent on all agencies, working in partnership, to continue to improve the guidance, support and training provided to professionals working in this space to give them the skills, knowledge and confidence to make the right decisions as well as providing the services and other support children need to thrive.



**1.18** All looked-after children have statutory health assessments and reviews that enable identification of any physical and mental health needs that need support or intervention. Multiagency reviews should ensure that health plans are progressed. Looked-after children have higher rates of mental health difficulties than their peers and may have experienced many traumas in their lives. Many areas have dedicated child mental health services for looked-after children which are not utilised. As well as providing direct mental health assessments and interventions, CAMHS clinicians can provide consultation to social workers, youth offending workers, and others in the criminal justice system to help support the development of a holistic plan for the child's welfare and safety.

**1.19** The evidence shows that multi-agency approaches based on a common set of principles and clear frameworks provided by a local protocol can make a difference. One initiative in Dorset, based around a local protocol, saw reductions in call-outs from children's homes of 49 per cent in January to August 2017 compared with the same period in 2016. Durham saw a reduction of over 50 per cent in the numbers of call-outs.

**1.20** Through this Protocol, we recognise the part that all elements of the system have to play in continuing to reduce criminalisation of children and young people, while continuing to support children and provide the best possible care to help them overcome traumatic childhoods and on-going difficulties. By working together and learning from best practice, we can continue to improve the experiences and life chances of thousands of London children and young people.

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6. Williams, K. et al (2012) Prisoners' childhood and family backgrounds Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners. London: Ministry of Justice

7. HM Inspectorate of Prisons (2020) Children in Custody 2018–19 An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions. London: HMIP

## 2. About this protocol

**2.1** In November 2018, the Department for Education launched the *National protocol on reducing unnecessary criminalisation of looked-after children and care leavers* ("the National Protocol"). The document was intended to provide a set of principles, best practice and a framework to help local areas create their own protocols based on local environments and circumstances to prevent the unnecessary criminalisation of looked-after children in all types of care placements and care leavers up to the age of 25. The protocol was the result of months of consultation and co-production with leaders from across children's social care, justice, police, health and the voluntary sector.

**2.2** This pan-London protocol incorporates the core principles set down in the National Protocol and provides a framework for practice tailored to the complex environment of London and its 32 boroughs. It is aimed at local authority children's services, local care providers (fostering services, children's homes and other arrangements), the Metropolitan Police Service, education, Youth Offending Teams (YOTs), the Crown Prosecution Service (CPS) and HM Courts and Tribunal Service (HMCTS), magistrates sitting in local youth courts and health services in London, including mental health. It provides the principles and tools to facilitate the co-ordinated, consistent multi-agency practice that is needed to prevent unnecessary criminalisation. We are stronger and more effective if we work together.

**2.3** As the National Protocol stated, we have a joint responsibility to protect children who are in the care of the State and to do everything we can to act as good corporate parents and help children thrive and achieve their potential. The United Nations Convention on the Rights of the Child requires governments and their agencies to prevent criminalisation of children.

**2.4** At the heart of the National Protocol is the central question we should all be asking ourselves: **'would this be good enough for my child?'** This pan-London Protocol is based on this core principle and high standard. Professionals should apply the same criteria and level of care to their interactions with children and young people who are, or who have been, in care, as they would to their own children.

**2.5** Although this pan-London Protocol focuses on children within care and care leavers under the age of 18, the principles set out in the next section are relevant to care leavers up to the age of 25. Further work is being undertaken on how agencies will work together with adult care leavers to reduce criminalisation.

## 3. Key principles

### 3.1 The question that lies at the heart of this document is **'would this be good enough for my child?'**

As corporate parents and as a society we have a responsibility to ensure we protect the children we care/have cared for from unnecessary criminalisation and provide them with the support they need to move on from the adversities and trauma they have suffered to enjoy happy, fulfilling and productive adult lives.

**3.2** As corporate parents, local authorities must, under the Children and Social Work Act 2017, have regard to seven corporate parenting principles, including 'to promote high aspirations, and seek to secure best outcomes' for the children and young people they look after, and ensure that relevant partners understand how they can assist local authorities apply the principles in relation to the services those partners may provide.

**3.3** A strong corporate parenting ethos recognises the care system is not just about keeping children safe, but also about promoting recovery, resilience and wellbeing. This requires corporate parents to ensure that work across social care, placement providers, educational settings, health services, the police and other criminal justice partners, prevents unnecessary criminalisation. This pan-London protocol provides a set of commitments on behalf of all partner agencies. It is based on the following principles:

- Every effort should be made to avoid unnecessary criminalisation of looked-after children and care leavers under 18. This is in recognition of the fact that looked-after children's experiences can contribute to behaviours that make them particularly vulnerable to contact with the youth justice system, potentially affecting their future life prospects. A co-developed, whole system approach is needed. This should include prevention (such as addressing cause of adverse childhood experiences and mentoring), early intervention and appropriate response where children and young people do come into contact with the criminal justice system.
- Listening to and learning from children and young people. See the 'Voice of the Child' section in part 4 for more details on this and why it is so important.
- All professionals working with looked-after children and care leavers should understand the impact of trauma and abuse on development, particularly their effect on emotional and behavioural development and self-regulation. Professionals, including YOT workers, social workers, teachers, children's home staff and foster parents, health services, police, CPS, HMCTS and magistrates sitting in local youth courts, at both senior and frontline levels, should receive appropriate training in this regard.

- All agencies should contribute to the understanding of borough and pan-London factors that can increase children and young people's risk of being criminalised (such as going missing from school or their care placement and cross-area criminal activity focused on vulnerable children, such as county lines). They should use this to inform their practice and local implementation of the protocol, and to target prevention efforts effectively.
- All agencies should understand the specific needs of children and young people (both UK and foreign nationals) who have been trafficked or are victims of exploitation and modern slavery. They should be aware of the signs of exploitation and grooming and be able to identify where children and young people may have been coerced into undertaking or becoming involved in criminal activity by their traffickers/exploiters.
- Victims and communities have a right to be protected from offending and to have their needs and interests taken into account in decisions on resolutions to offending.
- Restorative and diversionary approaches should underpin responses, whether the behaviour occurs in a child's placement or the wider community.
- All professionals should pursue a child-centred approach based on a broad range of agencies providing an integrated, co-ordinated and proactive response to preventing and addressing challenging or offending behaviour.
- Children and young people already within the youth and criminal justice systems need protection from escalation and these principles apply equally to them. Persistent and more serious offending can indicate that the young person has significant unmet needs and responses to offending should recognise this.
- Children and young people on remand or custodial sentence are often highly vulnerable with multiple over-lapping risks and needs. This is a particular problem in London, where there are high levels of children being held on remand, particularly from Black and minority ethnic backgrounds. Many of these children go on to be found not guilty of the offence they were charged with. Between April 2018 and March 2019, two-thirds of children remanded to youth detention accommodation did not subsequently receive a custodial sentence. Bail should be sought and facilitated for children whenever possible. It is unacceptable, for example, that a child who has not been found guilty of a crime is held in prison for significant periods of time because suitable housing and support was not found for that child in the community. Work is underway with youth justice agencies and local authorities to address the rise in remand and BAME disproportionality.

- Children who are held on remand require careful multi-agency oversight and support, including from youth offending teams, Children's Services, health services and custodial facilities. Planning for the through-care and resettlement of young people on remand or serving a custodial sentence should start from when entering their remand placement, or custodial establishment, and involve all relevant professionals in their lives. Particular attention should be given to the early identification and provision of suitable post-custody accommodation and education, training and skills opportunities or employment options. Additionally, for those unable to access employment, education or training in the short-term, comprehensive benefit advice and support should be offered to help avoid any drift back to crime as a source of 'income'.
- 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 educational needs (including communication and interaction, cognition and learning and social, emotional and mental health difficulties) presented by looked-after children or those harmed by an incident are identified, acknowledged and addressed in the management of the response to the behaviour.
- Health services have a duty to give parity of esteem to the mental health needs as to the physical health of children and young people and to assist partner agencies to understand how children can best be supported to divert them from criminal behaviour.

**3.4** The majority of children enter care due to abuse or neglect, and many experience multiple placement moves, often across boroughs and between other parts of the country. Although planned moves can have positive effects and be in the best interests of the child, placement moves can also have negative impact on children. The damage of pre-care experiences and placement moves can contribute to an increasingly negative cycle, where placement moves lead to worsening behaviour as a communication of unmet needs which becomes hard for the young person to break. Responses to looked-after children and care leavers under 18 who show behaviour which can be experienced as challenging should be mindful of this and seek to avoid contributing to this cycle. As such:

- Local authorities in all boroughs need to work with the placement provider, carers, and the child to ensure placement stability and responsive care. This needs to be underpinned by high-quality up-to-date needs assessment, care planning and holistic support. Restorative approaches and other positive preventative approaches can help to prevent placements from breaking down or provide learning from incidents to reduce the risk of future placement breakdowns.

- Corporate parenting boards in all boroughs should ensure that systems are in place to identify all looked-after children they are responsible for who come into contact with the criminal justice system, whether placed within or outside the home authority, to build an accurate picture of their offending, challenging behaviour and any exploitation risks that they face. This should be used to support children and young people to reduce the risk of further criminalisation.

**3.5** [The Code of Practice for Victims of Crime](#) sets out the minimum standard that victims and witnesses of crime should expect to receive throughout their justice journey. If a crime has been experienced, carers should be aware of the rights set out in The Code for both themselves and any young people they may be working with.



## 4. Voice of the child

**4.1** Article 13 of the United Nations Convention on the Rights of the Child, provides every child with the right to express his or her views, get information and share their ideas. The requirement for looked-after children's wishes and feelings to be taken into account is enshrined in Section 22 of the Children Act 1989. Encouraging children and young people to express their views, wishes and feelings and taking these into account, is also a key part of the corporate parenting principles to which local authorities must have regard of when exercising their functions in relation to looked-after children.

**4.2** Listening to, learning from, and acting on children and young peoples' voice is vital to having effective policies and support in place to avoid criminalising children and young people. It is also vital to making sure the correct support is put in place to help children and young people resolve problems and avoid future contact with the criminal justice system. This should be underpinned by the following:

- Asking for the child or young person's view of what has happened when responding to an incident. This is an opportunity to understand the child or young person's perspective - both to inform decision making about how to respond in their best interests and to avoid criminalisation where possible. Agencies should approach these conversations with an open mind and be open to the possibility that fault might not lie at all, or in its entirety, with the child or young person.
- Children and young people should have access to a mediator outside the conflict, such as a social worker, another carer in the home or another trusted adult before police involvement.
- Children and young people's views should be asked for and be taken into account in any reports written about the incident, including police, children's homes and other social care reports. Children should be informed of what has been said and written about them and to have an opportunity to challenge anything they believe is untrue or unfair. Professionals should consider the long-lasting impact these reports can have on children's lives and ensure they are accurate, balanced, moderate in their use of language (for example, consider the effect of words such as "aggressive" and "violent") and include the voice of the child.
- Seeking children and young peoples' views after an incident, particularly where they have come into contact with criminal justice agencies, and feeding this into agencies' policies, practice, their staff learning and approach to behaviour management to help prevent future incidents.
- Providing advice, information and support to secure the support of an advocate<sup>8</sup>.

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<sup>8</sup> Further information on advocacy for is available in [Providing Effective Advocacy Services for Children and Young People Making a Complaint Under the Children Act 1989 and The Independent Reviewing Officers Handbook](#).

- The views of looked-after children and care leavers should be sought when commissioning health services, including accessing support services for both physical and mental health needs. Care homes should involve children and young people in policy design within the home to build trust with carers.

**4.3** In addition to the above, a key part of listening to a child's voice where they come into contact with the criminal justice system is ensuring that they understand their rights, including their right to legal representation and are supported to access this where needed. If a child is in police detention, they have the right to free legal advice. A solicitor who is on the duty rota for the police station where they are being held can be contacted or they can choose to be represented by their own solicitor simply by providing their solicitor's name and firm to the custody sergeant when they are being booked in to custody. This must be explained to them at the police station. Children should be supported by a youth-justice specialist lawyer. Arrest should be a last resort. Staff and Police should aim whenever possible, to de-escalate the situation and arrange for a child to attend the police station for interview voluntarily with their solicitor within social hours to avoid children spending long periods of time in a cell.

**4.4** All children and vulnerable adults are entitled to an 'Appropriate Adult' when in police detention. In the case of a looked-after child the Appropriate Adult can be a family member, a person representing the local authority responsible for them, a social worker or, failing that, any responsible adult over the age of 18 who is not a police officer or employed by the police (PACE Code C, para. 1.7), such as a carer, provided they are not involved in the investigation. The role of the Appropriate Adult is wide-ranging and critical to the support the child receives, the child's experience of custody and the outcome of their contact with the criminal justice system<sup>9</sup>.

**4.5** If a child is charged with an offence, they have the right to be legally represented (Article 6, European Convention on Human Rights). If a child does not have the means to pay for the legal assistance then, in most circumstances, they have the right to legal aid. The child should also be informed they have a right to make a complaint or appeal a decision.

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9. For guidance in relation to points 4.2 and 4.3, see Howard League for Penal Reform and Just for Kids Law (2019) *Representing looked after children at the police station*. London: Howard League for Penal Reform. Available at <https://howardleague.org/publications/representing-looked-after-children-at-the-police-station/>



## 5. Prevention

**5.1** It will be an expectation of all local authorities that staff and carers of children and young people in care, including foster carers (LA, Independent or Kinship), will strive to manage challenging behaviour at the placement by way of internal resolution and without the involvement of police wherever possible. All care home staff and foster carers should know which types of incidents should be dealt with internally and which require police attention. Please see section 6 for more details. Care home staff and foster carers should have training in restorative justice and conflict resolution to enable them to resolve minor incidents.

**5.2** When the police have been called, for instance where there was concern about immediate safety, the police are able to use their discretionary powers to allow the care setting to resolve the situation internally using restorative principles where appropriate.

**5.3** Ensuring looked-after children have the right placements that meet their identified needs will significantly contribute to prevention. Placements have to be based on as full an assessment of the child's social, educational, health and other needs as possible and the networks in place to support those needs being met. Where availability of placements can differ, it is important that suitability is not compromised and that placements are registered, safe and stable. Analysis of the ACES (Adverse Child Experiences) of a child and the issues in contextual safeguarding are fundamental to effective prevention work with the child.

**5.4** When choosing placements, careful consideration should be made as to how the cultural and identity needs of the child or young person will be met.

**5.5** Policy and practice must evidence that children are, and feel themselves to be, at the core of decision making about their future and in dealing with specific issues.

**5.6** It is also important that looked-after children have trust and confidence in their social worker. If a young person raises concerns about their relationship with their social worker, these concerns should be listened to, looked into and given a considered response.

**5.7** A range of examples of London local authority prevention work are included on the following page.

### 5.8 Assessing the risks dynamically – and minimizing them.

Each local authority has its own model for successful partnership identification and management of risks for individual young people. Some examples include:

- **Wandsworth** works with neighbouring LAs to scrutinise links and share information about specific vulnerable young people and review trends so that there can be effective cross border work.
- **Hillingdon** Young People's Plans have moved away from process-driven approaches to the involvement of young people and their carers in a way which is empowering.
- **Ealing** is seeking ways to improve knowledge of young people placed in Ealing by other Boroughs and to work with them to assess risk and improve placement outcomes.

### 5.9 Support for Early Intervention and Prevention

#### ***In the placement:***

The links between a specific placement and local community and voluntary groups can provide rich opportunities to engage children in positive activities and access necessary services. Carers and social workers should encourage young people to access such positive activities.

#### ***Multi agency prevention work:***

**Waltham Forest** has developed an integrated adolescent services approach to bring an inclusive approach to work across schools and specialist services.

#### ***In school:***

The educational and social opportunities at school are a major source of positive opportunities and role models for children and the chance for children to learn how to manage risk or conflict with positive outcomes. The role of the Safer Schools Police Officer can be a positive one in enabling problem-solving without recourse to the criminal justice system.

**Lambeth** has a Social Workers in Schools project operating in 5 Lambeth secondary schools and 3 primary schools.

#### ***In the community:***

**Ealing** is supporting youth outreach work across the Borough, 1:1 work and some school-based work. There is also a 24-hour helpline for advice and support.

**Hackney** has developed Contextual Safeguarding work with the University of Bedfordshire to profile the locality risks and steps to minimise them.

### 5.10 Monitoring

- A key foundation is ensuring that professionals have a structure to engage with, hear, and act on the voice of children in care. This aids in understanding what is working to prevent harm and risk, and what supports their aspirations. Boroughs have various forms of such consultation, with some using Young People's Commissioning Groups.
- Local Authority Corporate Parenting Boards have the key responsibility for ensuring their children are protected from offending and criminalisation and should be receiving evidence to assure them that prevention work is effective across social care and other partners including schools and community groups.

## 6. Responding to incidents

**6.1** It is reported that 71% of children in care who are criminalised have emotional or behavioural health concerns compared to 51% of all children in care. Many looked-after children often display the most challenging behaviour due to their pre-care adverse childhood experiences (ACEs). This can be exacerbated by experiences in care and/or other problem ongoing in their lives. ACEs are potentially traumatic events that can have negative, lasting effects on health and well-being such as:

- Verbal abuse
- Physical abuse
- Sexual abuse
- Physical neglect
- Emotional neglect
- Parental separation
- Household mental illness
- Household domestic violence
- Household alcohol abuse
- Household drug abuse
- Incarceration of a household member

**6.2** These ACEs can have a significant influence on problematic behaviour and likelihood of youth justice involvement. A trauma-informed approach must be adopted when interacting with looked-after children, and carers, police officers and other professionals are encouraged to take on a corporate parent ethos and ask themselves **'would this be good enough for my child?'** when responding to incidents in children's care homes and other provisions.

**6.3** 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 (See appendix A & B). Where possible you should refer the child to mental health support services.

**6.4** Any incident reported to the police which amounts to a crime will be recorded against an identified victim in accordance with the National Crime Recording Standard (NCRS)<sup>10</sup>. Managers, both in the care setting and within children's social care, should reflect on this and the potential long-term impact on the child in order to make informed judgements as to which incidents they wish to report to police.

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10. This governs the way in which the police record crime. Under this standard, the police will record an incident as a crime (notifiable offence) against an identified victim if, on the balance of probability: 1. The circumstances as reported amount to a crime defined by law (the police will determine this, based on their knowledge of the law and counting rules) 2. There is no credible evidence to the contrary.

### 6.5 Different Levels of Incident/ Crime

This Protocol identifies three levels of incidents and outlines an expectation of how these incidents should be dealt with:

**Level 1** – (Internal resolution – these incidents should be dealt with internally by carers)

**Level 2** – (Either way dependent on circumstances – these incidents could be dealt with internally by carers or may require police involvement. More guidance is given below.)

**Level 3** – (Always report to Police)

Factors to be considered:

- Nature and seriousness of the allegation
- Severity of any injury sustained/ nature of threat received by the victim
- Wishes and best interests of the victim
- How much the incident was intentional or accidental
- Previous incidents of a similar nature by the same child or young person

- Previous relationship between victim and offender
- Previous behaviour or offending, bullying/peer pressure/duress
- Probability of a repeat incident
- Appropriateness of police action/ court proceedings
- Future best interests of all parties concerned
- Message sent to other young people/ confidence in being able to report crimes and in knowing they may not result in court proceedings
- Availability of alternative course of action e.g. restorative approaches, referral to Youth Offending Service
- Level/value of damage caused
- Requirement for formal investigation e.g. insurance claim requires a crime reference.

**6.6** The over-arching principle is that immediate police attendance should only be used in situations when the level of risk cannot be safely managed by staff/ carers.

### 6.7 Level 1 (Internal resolution)

- The use of restorative approaches is strongly recommended, as research has shown Restorative Justice to be effective in reducing repeat behaviours, enabling the victim to move on from the incident and increasing the perpetrator's understanding of harm caused.
- However, there may be circumstances where a Level 1 incident warrants police involvement, for example a prolonged incident or where a child or young person in care has committed the same criminal behaviour many times and the setting has advised that any further repeats would result in police involvement. Contact should be made at [www.met.police.uk/ro/report](http://www.met.police.uk/ro/report) Alternatively, there is the option to call 101.
- Carers should be mindful that any previous offences disclosed to police would require recording in line with the National Crime Recording Standard.
- The setting, in liaison with the child's social worker, should consider a referral to the Youth Offending Service or local Early Help services, for advice, guidance and support.
- Examples of Level 1 incidents include:
  - Minor criminal damage (broken crockery)
  - Assaults resulting in minor injury (grazes, scratches, minor marking of skin, minor bruising)
  - First occasion of possession of Class B or C drugs.

### 6.8 Level 2 (Either way, dependent on circumstances)

An incident where no immediate response is required, for example where assault or damage has occurred and there is no risk of reoccurrence/ significant harm to people, or incidents of theft.

- These incidents should be reported to the Registered Manager, who has the responsibility for identifying the appropriate course of action.
- Staff within the home should also notify the child/young person's social worker at the earliest opportunity.
- Where Level 2 incidents occur within a foster placement, the foster carer should contact the social worker or the out of hours duty officer for advice on the appropriate course of action. The foster carer and/or his/ her family members may be the victim and it is important that their views are taken into consideration when deciding whether to involve police.
- For both settings it is important to avoid any unnecessary reporting of incidents to the police. Where a victim wishes for formal police involvement or the Registered Manager or social worker has considered it appropriate. Contact should be made at [www.met.police.uk/ro/report](http://www.met.police.uk/ro/report). Alternatively, there is the option to call 101.

- In certain circumstances preservation of evidence may be an issue and staff/carers will need to ensure that reasonable steps are taken to retain articles relevant to any criminal allegation or police investigation. Settings should have clear guidance in their policies to manage this.
- The setting should consider a referral to the Youth Offending Service for advice, guidance and support.
- Examples of Level 2 include, subject to the specific circumstances: -
  - Persistent Level 1 type behaviours
  - Possession of Class A drugs
  - Second occasion of possession of Class B or C drugs
  - Series of minor thefts and/or of substantive value
  - Minor, but not superficial, cuts of a sort likely to require medical treatment (e.g. stitches)
  - Minor fractures
  - Loss or breaking of teeth.

### 6.9 Level 3 (Always report)

A 999 response is always required where children/young people and/or staff and/or property are at risk of any of the following:

- Immediate serious physical harm
- Substantial damage to property, e.g. deliberate fire-raising or damage over £5,000
- Significant disorder within the home or placement
- An incident has occurred that is serious in nature i.e. allegation of sexual assault or sexual exploitation (disclosure of past sexual abuse or exploitation does not require a 999 response).
- A member of staff within the residential home should contact the police using 999. Foster carers should also call 999 as well as contacting the Out of Hours Service for further support.
- Level 3 offences which do not require an immediate response should be reported at [www.met.police.uk/ro/report](http://www.met.police.uk/ro/report) Alternatively, there is the option to call 101.

Example of such incidents may include: -

- Repeated possession of Class B or C drugs
- Second occasion of possession of Class A drugs

- Possession of weapons (no aggravating features, e.g. weapon surrendered to staff)
- Criminal damage (high level)
- Supply or possession with intent to supply drugs.
- In cases of more serious offending, police decision-making processes will apply. The good practice principle here is for procedures to allow for a cooling off period, for decisions to be reached in 'slow time' and informed by key workers/officers having taken into account all factors and information.

**6.10** In cases investigated by the police, an officer who has been appropriately trained and is experienced in restorative justice will conduct interviews on a voluntary attendance basis where possible, with an appropriate adult arranged by the home or a relevant professional. The child should be informed that they also have a right to a Youth justice specialist lawyer. Care providers should have plans in place to allow the child to be managed within the home.

**6.11** Police will only arrest a child or young person in care in accordance with Section 24 of the Police and Criminal Evidence Act 1984 (PACE) and the codes of practice defined in code G. An arrest will only be justified if the arresting officer believes it is necessary for any of the reasons set out in section 24(5) of PACE. Considerations should be made as to whether the required objectives could be met by other, less intrusive means such as caution+3 interview, community resolution or restorative justice.

**6.12** Where there is a local police officer aligned to the residential setting, that officer should be involved in the decision-making process. The officer will maintain regular contact with the care setting and can provide ongoing advice but should not be relied upon as a means to report crime that would otherwise be reported online or over the phone in the first instance.



## 7. Illegal substances

**7.1** The majority of looked-after children have experienced adverse childhood experiences and trauma. Given placement moves and education disruption, looked-after children are less likely to have consistent reparative attachment relationships with supportive adults. The absence of these relationships can leave looked-after children hugely vulnerable to criminal and sexual exploitation, which is covered in the next section.

**7.2** The use of illegal or psychoactive substances by young people, as defined under the Misuse of Drugs Act 1971 and the Psychoactive Substances Act 2016, can seriously affect their emotional, mental and physical well-being. If not dealt with appropriately, this can lead to cycles of offending, subsequent criminalisation and increased risks of exploitation.

**7.3** Some children may be misusing substances to manage emotional needs which they are not receiving appropriate support for. Interventions should include addressing the underlying causes of substance misuse and a hypothesis regarding reason for use should be recorded clearly and reviewed as part of the child's care plan, for example age appropriate experimentation, sense of social isolation, loss and separation, low sense of self-worth. Interventions to address these areas may be delivered as part of the substance misuse intervention or in parallel.

**7.4** Children's homes in themselves can also become attractive to criminals and/or abusers and can be susceptible to anti-social behaviour, substance misuse and grooming.

**7.5** When considering a response to a child's substance misuse the wider risks to the child must be considered and kept under review.

**7.6** The Local Authority should ensure they have in place a mechanism for ensuring they are sharing intelligence regarding risk hot spot areas and share it across the multi-agency network.

**7.7** Where concerns are identified multi-agency disruption should be considered, targeting the area and or networks.

**7.8** The Safer Neighbourhood Team or Named Police officer will have a crucial role to play in understanding contextual safeguarding issues.

**7.9** Each children's home and fostering service will have its own drugs policy, with the key focus on being to ensure appropriate education and treatment services are in place to support the young person.

**7.10** Irrespective of the decision to contact the Police, the use of illegal substances should be addressed, and consideration given as to whether this is best addressed via key work sessions or through specialist substance misuse services. The aim of these sessions/ services should be to address substance misuse through harm minimisation, identification of risk factors of continued use and tackling the underlying driver/s for use.

**7.11** Information regarding repeated drug use within the home or concerns about drug dealing should always be shared with the police. It is important that this is shared in a timely manner. This can be reported at [www.met.police.uk/ro/report](http://www.met.police.uk/ro/report). If it is an emergency, then 999 should be called. For anything non-urgent, police can be contacted by calling 101.

**7.12** Staff should always consider the nature and seriousness of any incident before deciding which route to take and should consult with a senior manager before proceeding with a formal police complaint, unless there is an immediate significant risk of harm. Please refer to police involvement levels outlined in section 6 to support decision making.

**7.13** If a child does commit an offence involving possession of larger quantities of drugs, they should be viewed as a child at risk of harm and consideration should be given to whether they have been coerced psychologically or through threats of violence. In this instance the child should be referred to local criminal exploitation services.

**7.14** Staff in children's homes or other settings are lawfully allowed to confiscate drugs or unknown substances from children in their care. If having followed the protocol the police are to be called to deal with the child in care, then the home should store the substances securely and contact police to attend as soon as possible to collect the item. An entry should be made in the home's log, where applicable, and a signature obtained from the attending officer.

**7.15** If the home or carer deals with the child without involving the police, then a recognised procedure should be in place to allow for the destruction of the drug as soon as possible. A log of seized items should be kept, and disposal should be witnessed by another member of staff or suitable person, and the log should be signed by both people. The log should contain a description of the drugs. Best practice will be for a photograph of the seized item to be taken.

## 8. Child exploitation

**8.1** We know that looked-after children are generally at a higher risk of child exploitation than their peers not in care. This can include both sexual and/or criminal exploitation. The '**SAFEGUARD**' mnemonic is a helpful memoire for carers and other professionals to use to aide in spotting the signs of child exploitation. Below is an idea of what to look out for:

**S: Sexual identity, wellbeing and choice** Sexually transmitted infections (particularly repeat infections); pregnancy; terminations; changing or out of character sexual behaviour; experiencing violence/coercion with sex. Exploring sexual relationships or feeling pressured to perform sexual acts in exchange for status/protection, possessions, substances, alcohol or affection in an unsafe context or environment. Unable to disclose sexual orientation and fearful of societal responses. Links to OCGs frequenting in known exploitation 'hot spot' areas. Talks about or witness to recent incidents of violence. Admits to carrying or will carry a weapon for self-protection.

**A: Absence, Truancy and going missing** Truancy from school, missing from home or care frequently, and repeat incidents; travelling outside borough/town when missing; unexplained absences. Arrested or found in a county force location, possibly linked to county lines. A child going missing overnight, for longer periods of time, frequently or unaccountable absences during the day. Generally, feels unsafe and no fixed abode.

### **F: Familial physical/sexual abuse and/or problems at home**

Current/suspected abuse in the family, lack of parental relationship. Sexual, physical, emotional abuse and neglect; risk of forced marriage or honour based violence; female genital mutilation; domestic violence; substance misuse; parental mental health concerns; bereavement; parental and sibling criminality; experiences of homelessness or sofa surfing; living in care or temporary accommodation; immigration status. Family linked serious and organised criminality and family member's victims of serious violence.

### **E: Emotional and Physical Health**

Suicidal thoughts, plans and attempts; self-harm; low self-esteem/confidence/worth; learning difficulties; changing emotional wellbeing and signs of poor mental health; unexplained injuries and changes in physical appearance. Concerns regarding experiences of Trauma, PTSD.

### **G: Involvement in gangs or gang-affected family, peers or siblings;**

concerns of abusive peer groups; involvement with older individuals or groups, lacking friends in the same age groups; older 'boyfriends'; sudden changes in peer groups; bullying, both on and off line; friends of young people experiencing CSE. Victim of violent related crime arrested for serious and organised criminal offences. Friends and peers linked to organised crime groups. Arrested for carrying a knife / blade or for holding a firearm. Associating with

much older people or stopped by police in car with older unrelated adults. Arrested for possession with intent to supply Class A Drugs. Possession of large quantities of drugs (involvement in county lines).

**U: Use of technology and sexual bullying** Appeared as a perpetrator or victim in online social media relating to criminal or sexual exploitation. Sexting, both sending and receiving; being listed on social network pages in relation to sexual activity and, or named in videos; secretive use of the internet/ phones/social networking sites; sudden behaviour changes when using the phone or internet; control via phone or internet; multiple or secretive social networking profiles. Presence on gang videos, threatened or groomed on social media. Images or videos may include, drug taking, weapons, money, peers and adults thought to be associated with gangs/criminal activity. Being coerced and controlled to post inappropriate language /information sexual pictures when contacted. Suddenly stopped using any social media.

**A: Alcohol and drug misuse** Problematic substance use - Daily / regular or reliance on both legal and illegal substances and it's unclear as to how this is being financed Hospitalised due to drug or alcohol consumption? Child has been arrested for drug possession with intent to supply, on a county line or in a 'trap house' or 'bando'.

**R: Receipt of unexplained gifts / money** Unexplained money, mobile phones; phone credit, items, clothes, money; new nails; travel in taxis; gifts where payment is required at a later date; worries about having debts. No money problems when family struggles financially, has monies being transferred through their bank account.

**D: Distrust of authority figures** Resistance to communicating with parents, carers, teachers, social services, health, police and others.

**8.2** Where there are concerns in accordance with the '**SAFEGUARD**' mnemonic, positive action should be taken. Carers are encouraged to **speak with the child and gather and record as much information as possible**. If a child is believed to be at risk of exploitation, always inform social services so that they can make the appropriate 87A and National Referral Mechanism (NRM) referrals. This will lead to both a non-crime exploitation report and a NRM investigation.

- Is there an immediate need for police involvement? Such as a disclosure of a recent sexual assault / imminent danger? Always call 999 and treat as an emergency.
- If the concerns do not require an immediate police response call 101.
- Always consider sharing safeguarding information with social services.

**8.4** The National Referral Mechanism (NRM) is a framework for identifying and referring potential victims of modern slavery and ensuring they receive the appropriate support, to be used where it is believed that a child or adult is a victim of modern slavery or trafficking. Certain roles and organisations, including local authorities and the police, are named as First Responders and can refer a child to the Home Office for the case to be looked at further. Consent is not needed for under 18-year-olds.

**8.4** Children are often criminalised as a result of their exploitation and carers should receive training to help understand the complexities of exploitation and how to look out for signs. Children can be put in serious danger if situations are not handled correctly, so if there are concerns, these should be discussed with someone with expertise in the area at any early point. Carers should be made aware through training of the kinds of dangers children might face if, for example, they confiscate drugs (drug debts) or ground them. It is vital that carers make the police and others aware if they suspect that children are being exploited and that the child has access to specialist legal representation. Carers should be aware that there is a defence for children who commit crimes as a direct result of exploitation and that they should be treated as victims not criminals.

**8.5** Please refer to the Pan-London Child Exploitation Protocol for further guidance.

## 9. Police roles and responsibilities

**9.1** Any offence reported or referred to Police will be recorded in accordance with the National Crime Recording Standard (NCRS).

**9.2** MetCC (Command & Control) will consider all calls from care homes (from both staff and looked-after children) and if they believe it should be passed to despatch, then it will be reviewed by the Basic Command Unit (BCU) Ops or section Sergeant. This will allow the BCU to determine if a response is appropriate, and if required, ensure that a merlin pre-assessment check (PAC) report is created. If deployment is not required, the incident should be marked up explaining why and the care home should be advised accordingly.

**9.3** Where this policy has been applied and police have attended, for instance where there was concern about immediate safety, the police are able to use their discretionary powers allowing the care setting to deal with the incident internally, using restorative principles where appropriate.

**9.4** Neighbourhood policing, Child Sexual Exploitation and missing persons teams have a key role to play with Children's Homes and Foster Carers and good working relationships should be established to ensure the best outcomes for children and young people in care.

**9.5** Schools & Youth Officers should engage with looked-after children, contextually safeguard those with vulnerabilities and divert them away from crime and exploitation.

**9.6** When police complete an investigation into a young person, the outcome of the case will be subject to an evidential review by a suitably trained officer (ERO). Police use a national Gravity Factor system to assist in this process. Any case with a Gravity Factor of 3 or below can be submitted to the Youth Offending Team (YOT) via a Youth Referral Form (MG3Y) for consultation and consideration of Out of Court Disposal if appropriate.

**9.7** It is the responsibility of the initial investigating officer to ensure that a Merlin PAC report is completed for all incidents they deal with involving a child or young person in care, whether they are a victim or an offender. This will ensure that other agencies involved in children's safeguarding are informed through the local Multi-agency safeguarding hub (MASH).

**9.8** In cases where a child or young person in care makes a full admission to the offence in a PACE compliant interview, the investigating officer should consult with the Youth Offending Team for advice on a possible YOT referral, before deciding on a charge. If the child declines to make a full admission to an offence or denies to comment as such, the investigating officer should consult with CPS prior to making a charging decision.

**9.9** Where a child or young person in care denies the offence, or in some cases where they decline to make an admission, or where the offence is serious enough to merit consideration of prosecution, then Crown Prosecution Service guidance on decisions to prosecute looked-after children: Offending Behaviour in Children's homes is a sub-heading of the Youth Offender Guidance rather than being a separate piece of guidance in its own right. Section 10 of this protocol outlines the steps to be followed, by the CPS, for offences in children's homes.

**9.10** It is the responsibility of the local authority and the police to proactively assist the Crown Prosecution Service in reaching informed decisions in consideration of children and young people in care cases.



## 10. Prosecution of incidents in children's homes

**10.1** The decision to prosecute looked-after children for offences is a major decision and should be taken by a youth specialist who has attended the CPS Youth Specialist Course and is at least a Senior Crown Prosecutor.

**10.2** The youth specialist should apply the CPS guidance on Offending Behaviour by looked-after children in conjunction with the Code for Crown Prosecutors, CPS Policy Statements and legal guidance.

**10.3** The police are 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. The Crown Prosecution Service should bear this in mind when dealing with such reports.

**10.4** It is important that everyone is able to feel safe in the place where they live, whether that is in a family or children's home, and to have confidence in the Criminal Justice System to intervene and protect them where necessary.

**10.5** A criminal justice disposal, whether a prosecution or non-charge disposal, 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 in the public interest.

**10.6** Each home must have a written Behaviour Management Policy which sets out the measures of control, restraint and discipline which may be used in the home and the means whereby positive behaviour is to be promoted in the home. The home should develop an individualised plan for each young person, in line with the home's Behaviour Management Policy. 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.

**10.7** Youth Specialists should consider all the circumstances surrounding the offence and the child/young person before reaching a decision to prosecute and should apply the Code for Crown Prosecutors and all relevant CPS Youth Policies.

**10.8** Factors that should be considered are set out in the CPS ten-point checklist (See appendix C), which sets out the required information before a proper decision can be taken on looked-after children (this includes all voluntary arrangements, foster placements and secure training centres).



**10.9** The 10 points that should be considered include;

- i. Disciplinary policy of the children's care home/placement.
- ii. Why have the police been involved and is it agreed in the policy? There should be an explanation from the care home/placement regarding their decision to involve the police, which should refer to the procedures and guidance on police involvement.
- iii. Any informal action / disciplinary action already taken?
- iv. Any apology / reparation?
- v. Victim's views?
- vi. Social workers' views? The views of the key worker, social worker, counsellor or CAMHS worker on the effect of the criminal justice intervention on young people particularly where the young person suffers from an illness or disorder.
- vii. Care plan for looked-after child? If the looked-after child wishes 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. The local authority should be able to provide this information as it is an integral part of the care plan for the looked-after child.
- viii. Recent behaviour / incidents regarding the looked-after child? Information from the home/placement about the recent behaviour of the young person, including similar incidents and any incidents in the young person's life that could have affected their behaviour such as adverse childhood experiences (ACEs)? Any history between the young person and the victim? History of the incident and any previous action under the disciplinary policy of the care home.
- ix. Information about the incident from the looked-after child (interview or other?)
- x. Aggravating and mitigating factors.

# 11. Support for looked-after children in contact with the CJS

**11.1** Looked-after children who are already in contact with the Youth Justice System (YJS) will have an assigned Youth Offending Team (YOT) case worker and be under the Youth Justice Planning Framework. It is important that the care plan in place and any interventions delivered by the YOT for a child in contact with the YJS are aligned.

**11.2** All local partners should work to develop support for child in accordance with these four questions. Does the policy and practice;

- See children as children?
- Develop pro social identity for positive outcomes?
- Embed collaboration with children?
- Promote diversion from the youth justice system?

## THE PRINCIPLES

### 11.3 See Children as Children

Children in both the criminal justice system and in care are facing judgement, punishment and statutory outcomes or sentencing delivered in police stations and court buildings while also having experienced loss, shame and trauma through neglect, sexual or physical abuse and emotional abuse. The child will likely feel their behaviour is facing judgement and yet it is often an indicator of their trauma, both past and present. These are children learning to manage complex emotions alongside complex systems and are in a system expecting them to develop independence and maturity when they first need the opportunity to trust and manage structure (trauma-informed child development).

### 11.4 The aim is to support desistance

This means helping develop the pro-social identity of children to achieve positive outcomes.

Evidence has shown that key elements for helping young people to stop offending are a positive social identity and a positive outlook. In order to foster this, trusted and meaningful relationships are key. The young person also needs to be afforded chances to learn from mistakes (without accepting the behaviour but asking what they have learnt from this and how they want to move forward from it). A restorative approach that both identifies the harm caused and allows the young person to let go of the painful feelings of shame is key to supporting the development of an ongoing positive outlook. The young person also requires access to opportunities to develop. The partnership offer is key in regard to education, training and employment pathways, programmes that are not restricted by convictions and incentive-based programmes for those who have been out of formal training for some time. Support is also required alongside this to manage the stress of change.

### 11.5 Embed collaboration with children

- The child in care will be facing two allocated workers (Youth Offending Worker and a Social Worker)- both writing plans to address their needs and both making decisions about significant aspects of their life - alongside a range of other professionals involved in the delivery of these plans. Therefore, it is essential that the network around

the child is working together and agreeing the direction of travel in the best interests of the child.

- No plan is effective without the voice of the child. Both services should have mechanisms for gathering the voice of the child, through direct work and self-assessment forms, alongside participation forums and a Children in Care Council, both of which should be feeding back to both services to inform practice.
- Youth Offending Teams should analyse their work with children who have been/are in care under the five national standards and implement changes to meet the 'child first - offender second' principle.
- Local Youth Justice Management Boards should monitor support and outcomes for looked-after children especially if they're on release from the secure estate. The Board should hear the direct- and indirect -experience of children as service users and provide analysis of over representation/disproportionality specifically for the looked-after cohort and the actions taken in each case.
- Courts should ensure and monitor that they apply 'child first – offender second' principles in all their processes. This includes physical arrangements in court, how the pre-sentence report takes account of the context of children in care and how sentencing decisions were reached.
- The London Resettlement Partnership should monitor resettlement provision for looked-after children be that from remand or sentenced placements.

### 11.6 Where do these principles apply?

There are a range of stages where looked-after children may come into contact with the CJS and where youth justice workers and partners should apply these principles

- **In the community** – for example in community resolution processes
- **At the police station** - including the work of police with Appropriate Adult services and Liaison and Diversion services, and other services such as Rescue and Response
- **In case work** – when working with partners especially the children's social care case worker and other family support workers
- **Court processes** - including physical arrangements in court, how the pre-sentence report takes account of the context of children in care and how sentencing decisions were reached
- **Referral Order Panels** - where Community Panel members, supported by YJS staff, apply court-approved Referral Orders
- **Secure estate** - on remand, on sentence and in planning resettlement

## 12. Missing children

**12.1** It should be acknowledged by all parties that regular police interactions into a looked-after child's life when repeatedly reported missing can eventually normalise police involvement. Whilst a policing response to risk and vulnerability is clearly part of a joint agency safeguarding response, the expectation of the police to intervene in every occasion of returning home late, challenging behaviour and pushing of boundaries is not effective and is not a safeguarding response in itself.

**12.2** As mentioned previously, a culture of overreliance on the police to respond to minor incidents in the care placement applies equally to looked-after children being reported missing.

**12.3** Although reporting looked-after children missing may be well intentioned, carers and placement staff should be fully informed with each child's needs and vulnerabilities to make risk-relevant decisions. The police should become involved when there is a true risk to the child rather than as procedural habit.

**12.4** Care home regulations should be adapted to include appropriate recording of 'unauthorised absence' to not only limit unnecessary police involvement but to also preserve the relationship between the carer and the child.

**12.5** Since June 2020 the Metropolitan Police Service no longer handles the 'absent' category – defined as 'a person not at a place they are expected or required to be and there

is no apparent risk'. The category was almost exclusively used in London for the handling of incidents where no risk was identified in cases of 13-17-year olds reported missing from care. Care staff therefore have the responsibility to proactively communicate with, locate and return the child without involving the police. This includes incidents of breached curfews, staying out with known friends and regular pushing of boundaries.

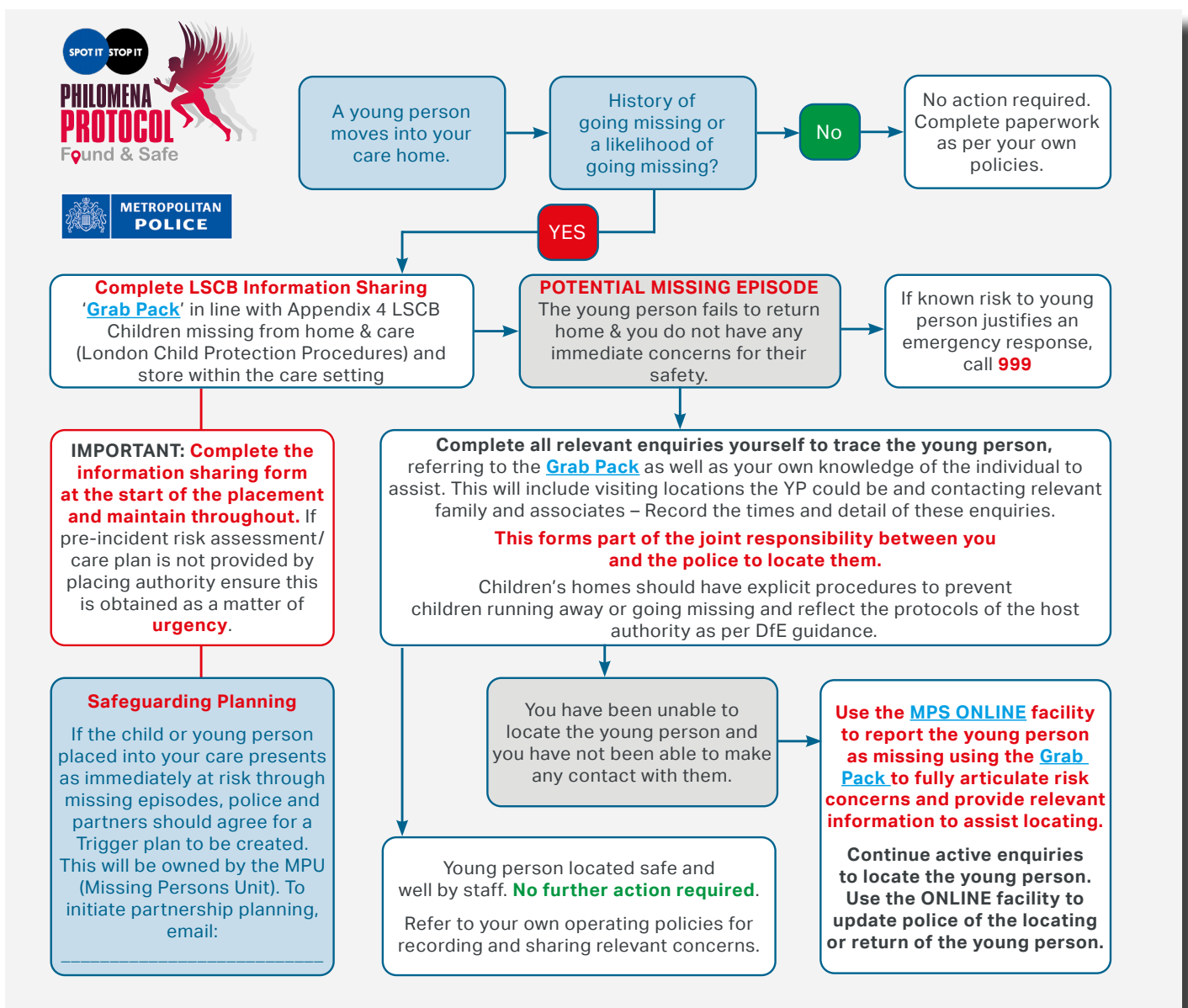
**12.6** It is the police expectation that in order to respond accurately and proportionately to reports of missing children from care, care placement staff should have already conducted reasonable enquiries to locate or understand the circumstances that mitigate or enhance risk on each and every occasion. This is crucial to allow the police to determine the most relevant response specific to the child in the shortest possible time.

**12.7** The Philomena Protocol has been launched across the Metropolitan Police Service and aims to ensure all parties are informed on how to better prepare for missing children incidents. At the point of reporting, the level of risk and the sharing of information under existing London Child Protection Procedures should be outlined. The protocol promotes supportive engagement between the police and high-demand care placements where reporting behaviours are shown to be less than optimal.

The protocol states the following information should be gathered and outlined:

- the sharing of accurate information that is maintained from the very start of the placement
- the use of the online reporting facility known and available to all social care placements
- the practical efforts of the care provider to meet regulations in terms of efforts to locate the child and to report only where risk necessitates a police intervention (see fig. 1)
- the police and care provision across London to achieve this without unnecessary and damaging police intervention.

Figure 1: Philomena Protocol



## 13. Recording of incidents by carers

**13.1** Children and young people's views should be asked for and be taken into account in any reports written about the incident. Children should be informed of what has been said and written about them and to have an opportunity to challenge anything they believe is untrue or unfair. Professionals should consider the long-lasting impact these reports can have on children's lives and ensure they are accurate, balanced, moderate in their use of language (for example, consider the effect of words such as "aggressive" and "violent") and include the voice of the child.

### 13.2 By Residential Staff

- All incidents require accurate recording within the residential children's homes incident log. This is to provide informed histories on the child/young person looked-after that assists with assessments and liaison meetings.
- All incidents must be recorded in the personal file of each young person and entered in the home's daybook/ incident log. Both the actions of the young person and that of the residential staff should be recorded, including de-escalation techniques used /restorative approaches and if the decision was made for police assistance, the reasoning for this.
- Risk assessments should be reviewed. This provision also applies to incidents discussed through regular liaison with local Neighbourhood Policing Teams.
- There should be evidence that the social worker for the young person has been informed of the incident and this recorded on the personal file for that young person.
- When a child is placed out of Borough, the residential home should make available to the responsible Local Authority for the child the Local Protocol to Reduce the Criminalisation of Looked-after Young People to which they ascribe. If a protocol is not in place, discussion can take place as to whether to adopt the principles in this protocol.

### 13.3 By Foster Carers

- It is necessary for incidents within foster care placements to be accurately recorded, to provide informed histories on the child/young person looked-after, assisting with assessments and liaison meetings.
- All incidents must be recorded in the personal file of each young person and reported to the family placement social worker and the child's social worker. Risk assessments should be reviewed. The actions taken by the Foster Carer in terms of response to the incident should also be recorded documenting whether they needed to make contact with the Emergency Duty /Out of Hours Team, or the Police and the reasoning for this.
- If the foster home is in a different Local Authority to the Local Authority responsible for the young person, discussion should be had with the Independent Fostering Agency



regarding the protocol they ascribe to, at the point of placement commissioning. If they do not have a Local protocol, consideration to be explored as to whether they would be willing to adopt the principles of this protocol.

### **13. Semi-Independent Placements**

- It is necessary for incidents within semi-independent placements to be accurately recorded, to provide informed histories on the child/young person looked-after, assisting with assessments and liaison meetings.
- All incidents must be recorded in the personal file of each young person and entered in the semi independent's daybook/incident log. Risk assessments should be reviewed.
- There should be a description in the log of the actions taken by the young person and the staff. If Police assistance was required, the reasoning for this. There should be evidence that the Young Person's Social Worker has been informed.

## 14. Placements out of area

**14.1** The long-term impacts of placing a child out of their home borough or out of London should be considered. The child can become isolated from their friends and family and this can create greater risk or fear for the child, leading to potential increased trauma or criminality.

**14.2** Given the small locations covered by London Boroughs, children and young people will sometimes have to be placed in out of area placements. This guidance is to be followed for any child placed outside of a London Borough that is not signed up to this pan London agreement.

**14.3** When commissioning an out of area placement, the commissioning team will ensure that the provider is committed to following this protocol and specifically to using noncriminal responses to behaviour in the care setting. This commitment will form part of the placement contract.

**14.4** When a child is at risk of coming into contact with the police, preparation work should be undertaken by the placement commissioning service with both the placement and local police (including missing and exploitation police where appropriate) to the placement about the needs of the child and young person, and agreement should be reached about how incidents will be managed, in line with this protocol. This should also cover any possible contextual safeguarding issues in relation to the local area of the placement in order to ensure a joined-up approach to managing any potential risks to the child or young person

being placed, in terms of the area or community that they are being placed in.

**14.5** It is the responsibility of all London Boroughs to engage with each other when making a critical decision on a child placed out of their home borough especially when an offence has occurred.

**14.6** It is recognised that children and young people placed outside of London are often those with the most complex needs. Careful consideration should be made by the placing Local Authority about how the cultural and identity needs of their children and young people will be met, as well as how positive narratives can be promoted about them, in order to avoid inappropriate or unnecessary criminalisation of children in their care.

**14.7** Where a child or young person is placed out of London and is already subject to a Court Order, there should be clear communication between the placing and receiving Local Authority. The placing Local Authority should inform the local YOS that there is a child residing in their area who is subject to Court Orders. There should be clear communication between the placing and local YOS about roles and responsibilities – usually the placing YOS should retain oversight and responsibility for their child or young person but the local YOS (also known as the care taking YOS) may be asked to implement the Order.

**14.8** If a looked-after Child from London comes to the attention of the police in the area local to the placement, for whatever reason, the child's social worker and the local YOS must be



notified as soon as possible so that the incident can be dealt with at the lowest possible disposal.

**14.9** Children and young people placed out of London will be expected to access education, either independently of or linked to the placement. The child or young person's social worker and virtual school should ensure that the identified education provision is aware of the expectations outlined within this protocol.

**14.10** Some children and young people in care from other areas are placed at settings in various London Boroughs. This protocol will be expected to apply those settings in respect of all the children and young people.

## 15. Diversion and restorative justice

### 15.1 Promoting diversion from the youth justice system

- Restorative justice is an approach which can facilitate communication between a victim of crime and others involved to address harm done that is serious enough to involve the justice system. Restorative Practice is much broader, a way of being that encompasses a range of practices that focus on strengthening relationships, building community and addressing issues before they become bigger problems.
- The behaviour of a child that occurs in their care setting is best responded to by their care provider and social worker, rather than by police and courts. While the Youth Justice service can often provide access to specialist services, criminal justice involvement can be experienced by children as punishing and shame-inducing.
- Young people in care and on the edge of the criminal justice system should be offered opportunities to access the support needed to avoid criminal proceedings. For example, where low level offences have been committed, out of court disposal decision-making panels consisting of the Police, YOT and other partner agencies can provide an opportunity to work with the child to identify positive steps to divert them away from further criminal behaviour. Partnership working is key to ensure children in care can access the relevant specialist services.

These need to be considered for the child - not just the remit of the service, particularly for those children placed out of the area. When children are being moved due to their behaviour and then having to be reintroduced to new services multiple times there is a risk that they will disengage completely and become more entrenched in the CJS.

- Restorative approaches have been shown to be a constructive way to support each child to develop a 'pro-social' identity, help them to take a positive place in society and enable the victim and the child to move forward. Children can be supported to develop a pro-social identity by helping them to engage in positive and constructive activities and develop beneficial interactions with others. Restorative approaches can help children to see the value of good behaviour and promote inclusion.
- BAME, in particular Black, children are less likely to be offered diversion opportunities and less likely to receive out-of-court disposals which divert them away from the formal criminal justice process. Diversion decisions should be based on eligibility and the broader circumstances of the incident. Subjecting decision-making to scrutiny is a useful way to identify and address any patterns in decision-making.

### 15.1 When it can be used

- Restorative approaches may be appropriate for children who are demonstrating emotional maturity and an understanding of consequences to assist them in developing a positive self-identity. These approaches are intended to help victims play an active role in the justice process as well as helping children to learn from their actions. The nature and type of reparation can vary considerably, involve direct contact between the victim and child (if both parties agree and this can be safely managed).
- For low-level incidents it may be suitable for someone separate from the incident to facilitate the RJ meeting, provided the young person has confidence in the person's impartiality. For more serious incidents an external facilitator, such as one of the RJ specialists in the Youth Offending Service, is likely to be more suitable.

## 16. Needs of carers

**16.1** The effect on carers following an incident can be traumatic and should not be underestimated by providers. Under Regulation 35 (3)(b) of the Children's Home (England) Regulations 2015, Registered Managers are required to speak to the staff involved about the incident within 48 hours, as part of the incident review.

**16.2** Policies should reflect that at this time, enquiries into health and welfare are made in all instances and where appropriate, these should be recorded in personnel files. This includes any relevant accident records.

**16.3** Registered Managers and Providers have a duty of care towards their staff and this includes recognising that being involved in violent or frightening incidents is not part of most people's 'normal' experience. Offering appropriate support in a timely manner to address or reduce any ensuing effects should be part of the home's employment and/or behaviour management policy.

**16.4** Providers and Registered Managers should also ensure that any issues identified as contributing to the incident are addressed, including updating care plans to minimise the risk of recurring behaviours.

## 17. Governance and monitoring

**17.1** The London Crime Reduction Board structure will provide oversight of the protocol and monitor its effectiveness.

**17.2** Corporate Parenting Boards and Local Children's Safeguarding Boards should monitor the rate, frequency and level of offending by children and young people in care to be satisfied that whenever possible a non-criminal response is being used for behaviour in the residential setting.

**17.3** The MPS will collect data on calls from children's homes on a monthly basis to monitor the effectiveness of this protocol. The data will be pulled into a 'top 20' on a quarterly basis that covers homes that call the MPS an average of 20 times or more a month. When possible, MOPAC will work with partners to conduct a deep dive into the increase in calls and monitor the impact on protected characteristics, dependant on accessibility of relevant data.

**17.4** MOPAC will gather qualitative analysis and data from frontline professionals and forums/networks working with children in care to understand the impact of the protocol.

**17.5** MOPAC has conducted an internal equalities impact assessment (EIA) alongside the protocol to monitor the changing impacts on children in care and care leavers with protected characteristics. This EIA will be updated regularly and monitored. Partners are recommended to conduct their own equality impact assessments and monitor the changing impacts on children with protected characteristics and ensure any action does not widen existing disproportionality..

**17.6** As outlined in the protocol, BAME looked-after children face a compounded disadvantage to criminalisation. MOPAC will work with partners to improve the data they collect on ethnicity and partners are recommended to review the data they currently collect on ethnicity and find ways to record more granular data.

## 18. Review

**18.1** This protocol will be reviewed in March 2024.

## 19. Signatories

**Mayor's Office for Policing and Crime:**

Sophie Linden

Deputy Mayor for Policing & Crime

**Metropolitan Police Service:**

Commander Melanie Dales

**Drive Forward:**

Anton Babey, Chief Executive

**Association of London**

**Directors of Childrens Services:**

Martin Pratt

Chair, ALDCS

**CPS:**

Lionel Idan

Chief Crown Prosecutor, London North

Barry Hughes

Chief Crown Prosecutor, London South

**The Children's Society**

**Independent Children's Home**

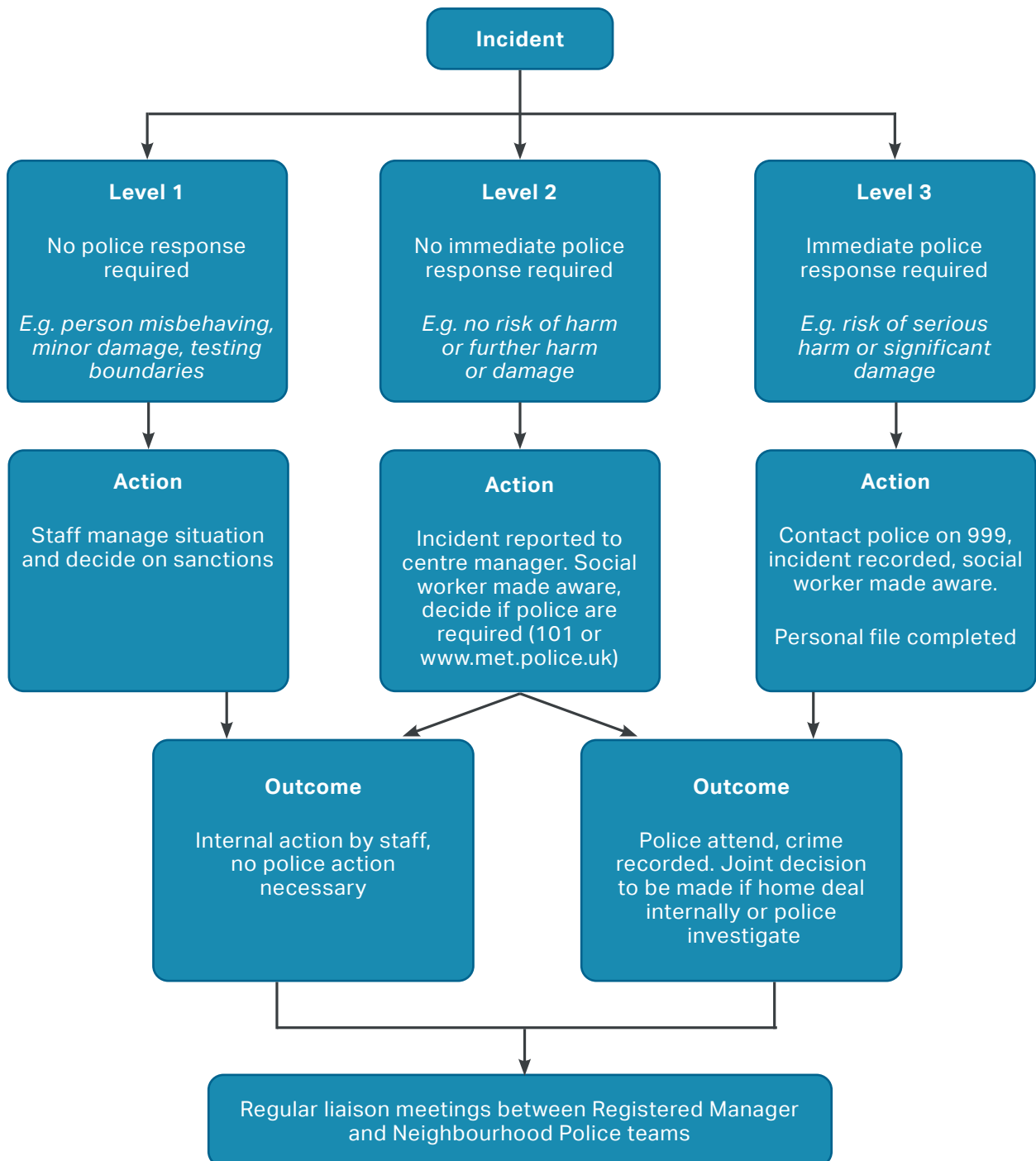
**Association:**

Elizabeth Cooper,

Deputy Chief Executive

**APPENDIX A: CHILDREN'S HOMES' DECISION TO INVOLVE POLICE**

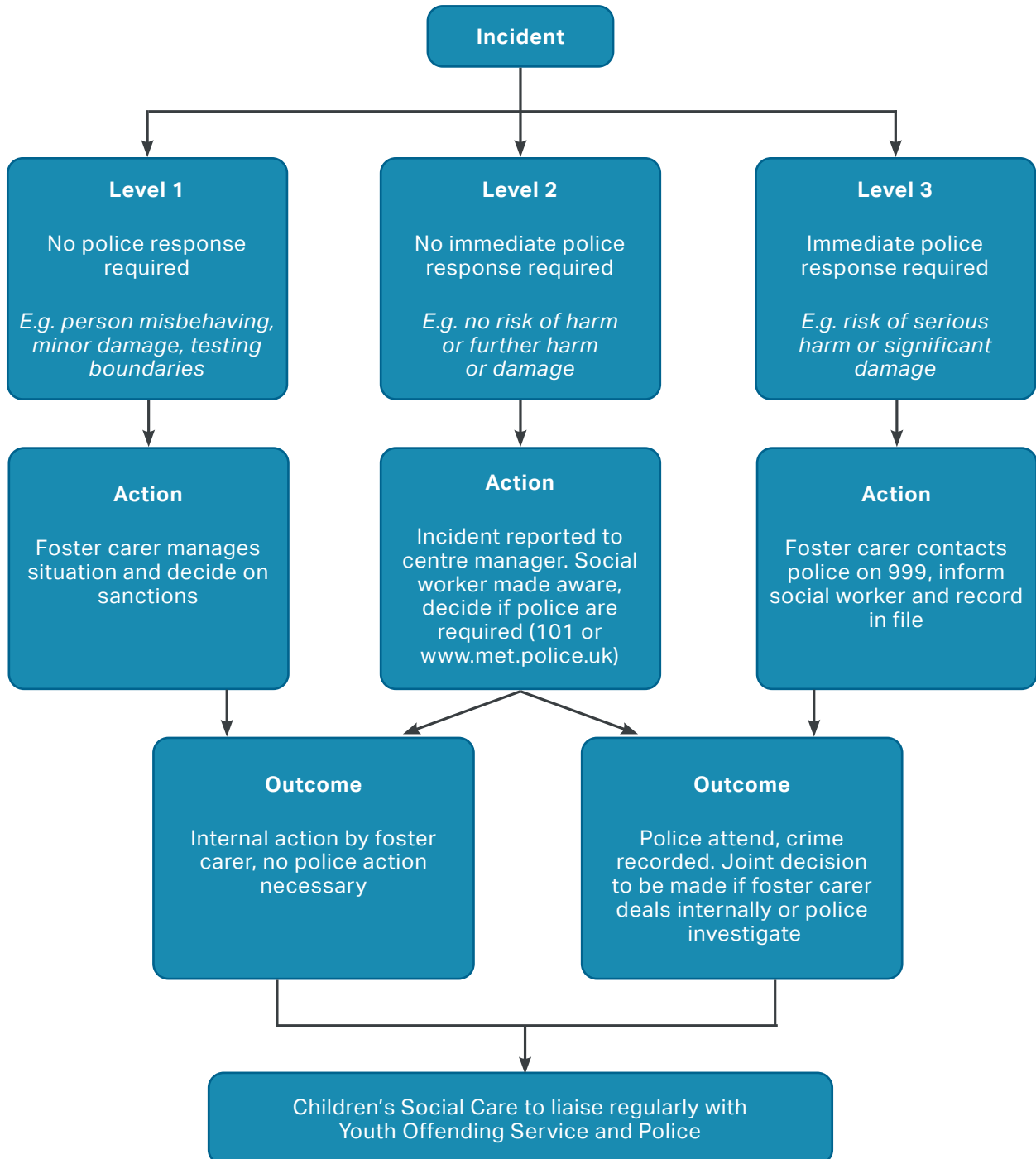
This policy must be followed when any member of staff is considering contacting the Police.





## APPENDIX B: FOSTER CARERS' DECISION TO INVOLVE POLICE

This policy must be followed when a Foster Carer is considering contacting the Police.



## APPENDIX C: CPS TEN-POINT CHECKLIST

### The Decision to Prosecute

Prosecutors are reminded of the need to consider all the circumstances surrounding the offence and the circumstances of the youth before reaching a decision and to apply all relevant CPS policies and documents. Failure to do so may result in

proceedings for judicial review:

*R v Chief Constable of Kent and Another ex parte L, R v DPP ex parte B (1991) 93 Cr App R 416.*

The 10-point checklist for offences in Children's homes setting out the required information before a proper decision can be taken on looked-after children (this includes all voluntary arrangements, foster placements and secure training centres). Factors that should be considered include:

1. Disciplinary/behaviour policy of the Children's home?
2. Why have the Police been involved and is it as agreed in the behaviour policy? An explanation from the Home regarding their decision to involve the police, which should refer to the procedures and guidance on police involvement.
3. Any informal / disciplinary action already taken by the home? Information from the Home about the recent behaviour of the youth, including similar behaviour and any incidents in the youth's life that could have affected their behaviour, any history between the youth and the victim, any apology or reparation by the youth, history of the incident and any action under the disciplinary policy of the Home.
4. Any apology / reparation? Information from the Home about the recent behaviour of the youth, including similar behaviour and any incidents in the youth's life that could have affected their behaviour, any history between the youth and the victim, any apology or reparation by the youth, history of the incident and any action under the disciplinary policy of the Home.
5. Victim's views? The views of the victim, including their willingness to attend court to give evidence and/or participate in a restorative justice or other diversionary programme.
6. Social Workers Views? The views of the key worker, social worker, counsellor or CAHMS worker on the effect of criminal justice intervention on the youth, particularly where the youth suffers from an illness or disorder.
7. Care Plan for Looked-after Child? If the looked-after child 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. The local authority should be able to provide this information as it should be an integral part of the Care Plan for the looked-after child.
8. Recent behaviour at the home / previous incidents
9. Information about the incident from the looked-after child (e.g. informal interview at the home)
10. Any aggravating or mitigating factors? Prosecutors should consider all of the aggravating and mitigating features when deciding on the appropriate outcome.

# MAYOR OF LONDON

OFFICE FOR POLICING AND CRIME

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