

South-east protocol to reduce offending and criminalisation of children in care

The challenge

Children in care (CiC) continue to be significantly over represented in the youth justice system relative to their non-looked after peers. Work to date across the south-east has established that published figures on offending by CiC are unreliable and the extent of their over-representation is likely to be significantly higher than the reported 'two to three times more likely to offend' than non-looked after peers. We also know that CiC are significantly over represented in the custodial system with surveys of prisoners and those in secure youth settings indicating that at least one quarter of all those incarcerated have spent some time in local authority care in their childhood.

So, the challenge is two-fold. First, it is incumbent upon us to recognise the pre-existing risk factors that place CiC at greater risk of offending and take steps not to exacerbate these. Secondly, the challenge is to provide the children and young people in our care with additional protection.

The HMI Probation, Ofsted and Estyn¹ report and the recent Justice Committee² report concluded that the youth justice system is currently failing children in care and care leavers. Both have recommendations for changes in practice to ensure more and better support and improved collaboration to prevent the unnecessary criminalisation of these vulnerable young people.

Significant progress is being made to address these challenges across the south-east region however, 15-51% of CiC are placed outside of their home local authority. Further reductions in CiC offending will only be achieved through improved joint working between all agencies and local authorities across the whole region. The regional protocol is designed to provide an overarching set of principles to inform the processes that will ensure CiC are kept out of the criminal justice system wherever possible and that those who do enter the criminal justice system are provided with services that are most likely to reduce re-offending. Although this is a regional protocol, the aspiration is that it will apply to all children including incoming children from areas outside of the south-east region, and that in time the protocol will apply nationwide.

¹ **Looked after children:** An inspection of the work of youth offending teams with children and young people who are looked after and placed away from home.' A Joint Inspection by HMI Probation, Ofsted and Estyn.

² <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/339/339.pdf> House of Commons Justice Committee: Youth Justice.

Introduction

This protocol covers the following local authorities: Brighton and Hove, East Sussex, Hampshire, Isle of Wight, Kent, Medway, Portsmouth, Southampton, Surrey, West Sussex and police services in Surrey, Kent, Hampshire and Sussex.

Each local authority within the region has either produced, or is working towards the production of a locally agreed protocol with their respective police force outlining detailed policies and procedures. This protocol does not seek to replace these local protocols but rather provides an overarching agreement that ensures that any child in care (CiC) within the region is afforded the same protection and consideration wherever in the south-east region they may live. This is irrespective of the type of placement setting and should include all of those CiC who are in kinship care and those living independently, as well as those in residential and foster care. It is based upon the good practice already in place across the south-east region and has been designed to reinforce and extend such practice and to contribute to a culture of continuous improvement.

It is anticipated that the principles contained within the protocol will act as a framework for ensuring best practice in dealing with CiC across the region. The protocol aims to strike a balance between the rights and needs of the children and young people, the rights of staff and foster carers and members of the public (where offending is outside of the care setting itself) and the decision to involve the police and/or Crown Prosecution Service.

The protocol aims to reduce the prosecution of CiC wherever possible, by encouraging the use of restorative justice (RJ) approaches. RJ is a process whereby the victim has an opportunity to be heard and to state the impact of the behaviour and the offender has the opportunity to take responsibility for his or her actions. Approaches can range from internal mediation within children's homes between young people and staff without involving the police, to informal resolution such as community resolution which does involve the police, to more intensive restorative work facilitated by specialist restorative practitioners.

Key principles

General

- A. Every effort should be made to avoid unnecessary criminalisation of children in care (CiC). This is in recognition that criminalisation can be a barrier to successful transition to adulthood and future life prospects and in recognition that the life histories of many CiC make them particularly vulnerable to involvement in the criminal justice system.
- B. It is every professional's responsibility when working with CiC to strive to understand the underlying causes of a young person's behaviour.

- C. Victims and communities have a right to be protected from CiC offending and an entitlement to have their needs and interests taken into account in finding ways forward in the aftermath of challenging/offending behaviour.
- D. Restorative approaches should underpin our response, whether or not this behaviour occurs 'in-house' or out in the wider community. This involves a commitment to work restoratively not only with those CiC but also those who they may have harmed by their behaviour.
- E. All professionals within the system should pursue an integrated approach to reduce CiC offending.
- F. Those CiC already within the criminal justice system also need protection from escalation and these principles should apply to them equally.
- G. CiC attracting a custodial sentence or remand are often the most vulnerable with multiple, over-lapping risks and needs requiring careful oversight and support from youth offending teams, Children's Service departments and custodial facilities. If their involvement in offending is to be successfully addressed preparation and planning for their through-care and resettlement should start from their point of entry into the establishment and involve all relevant professionals in their lives. Particular attention should be given to the early identification of suitable post-custody accommodation.
- H. All professionals have a duty to ensure that any special needs presented by CiC (or those harmed) such as mental illness or speech and language difficulties are acknowledged and addressed in the management of the response to the behaviour.
- I. It is in the best interests of young people to remain within their 'home' authority wherever appropriate where they can benefit from the services of their own corporate parents.
- J. Corporate parenting boards have the key responsibility for ensuring their children are protected from offending and criminalisation and should ensure that work is effective across social care and with criminal justice partners to achieve this.
- K. Corporate parenting boards must be confident that they have an accurate picture of offending by children in their care and should ensure systems are in place to identify all those who are offending whether placed within the home authority or outside.

Police involvement and decision making

- L. It will be an expectation of all local authorities that staff and carers of children in care (CiC) will strive to manage challenging behaviour at the placement address by way of internal resolution without involvement of the police wherever possible.
- M. Where this is not appropriate such as where there is concern about immediate safety, and where police become involved, the police should consider use of discretionary powers to apply an informal resolution response (such as community resolution).

- N. In circumstances where such a response is inadequate in the face of the seriousness of the offence then police should routinely consider potential for diversion from criminalisation/prosecution through discussion in local joint-decision making forums (wherever these have been established under 'legal aid, sentencing and punishment of offenders act 2012') and to consider suitability for a restorative case managed informal resolution, wherever such disposals are available: taking into account the wishes of those harmed and where the CiC makes admissions to the offence. 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 (such as police link workers for residential settings) to advise on case progression/diversion.
- O. Where CiC decline to make admissions 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 – Crown Prosecution Service guidance' should be actively applied. Furthermore, it should be the responsibility of the local authority to proactively assist the Crown Prosecution Service in reaching informed decisions in consideration of CiC cases.

Children in care placed outside of their local authority

- P. Children in care (CiC) placed outside their local authority should be afforded the same protection against involvement in offending and criminalisation as those placed within their local authority.
- Q. Every south-east local authority should ensure that there are reciprocal arrangements giving other local authority CiC the same protection as home CiC and the opportunity to achieve the same outcomes as their peers.
- R. Where a CiC offends out of area then it will be the duty of those in the area in which the offence has taken place to consult and discuss ways forward with the CiC's home authority, to ensure informed decision-making and that appropriate action is taken to address the risk of repeat offending in the future.
- S. To assist in the above each local authority/police area will work to ensure that a directory of key contacts is in place to ease communication across the region.
- T. The 'crime and disorder act 1998 section 115' ensures that all agencies involved in preventing offending have the power to disclose information for the purpose of preventing crime and disorder. It is vital in the prevention of offending, and protection of vulnerable young people that agencies develop an environment of information sharing that demonstrates to young people agencies working together, and keeping each other informed.
- U. With the above in mind the home local authorities will notify the receiving authority (within five working days) that a CiC is moving into their area, to mitigate against the risk that decisions will be made without knowledge of a young persons' 'looked after' status.

Response to incidents occurring outside the care placement

- V. In respect to incidents that occur outside of the care placement that may involve harm caused to members of the public then ideally police and or partners will consult with those involved and explore potential for cases to be dealt with by means of informal resolution (restoratively) wherever this is possible and within the scope of local joint decision-making arrangements.
- W. Local decision-making practices will vary from one area to another but as a general principle in all cases (other than where there is a clear non admission of responsibility) all children in care (CiC) decision making ought to be referred to the new joint decision-making panels that have arisen from the 'legal aid, sentencing and punishment of offenders act 2012'. These joint decision making panels need to have special regard to decision making in respect to CiC that ensures decision making is informed by information gathered from professionals associated with the child with a view to ensuring that the best possible service can be mobilised to address the unmet needs of those involved, support any restoration and work to reduce the risk of further offending.

The principles of this protocol are applicable to the ten local authorities and four police forces who are signatories. The protocol is applicable to all placements, including foster and children's homes, both local authority, private and voluntary provision wherever the location within these local authorities..

The protocol supports the Department of Education national minimum standards for children's homes, which state that: "the homes' approach to care minimises the need for police involvement to deal with challenging behaviour and avoids criminalising children unnecessarily".

This protocol further supports the Ofsted inspection framework which under the key judgement: 'The experiences and progress of children looked after and achieving permanence' says that local authorities are likely to be judged as good if:

"Any risks associated with children and young people offending, misusing drugs or alcohol, going missing or being sexually exploited are known by the local authority and by the adults who care for them. There are plans and help in place that are reducing the risks of harm or actual harm and these are kept under regular review by senior managers" (page 18).

This protocol further supports the HMIP thematic report, 'Looked after children: An inspection of the work of youth offending teams with children and young people who are looked after and placed away from home' which recommends that youth offending team managers should ensure that:

- accurate information about children and young people who are looked after and placed outside their home area is sent promptly to the youth offending team in the new area
- assessments, intervention plans and reviews on children and young people take full account of the impact of being looked after
- the enforcement processes for court orders and post-custodial licences are sensitive to, and take account of, the circumstances of children and young people who are looked after

- action is taken, where appropriate, to increase the number of children and young people who are dealt with through restorative justice measures when they offend within the residential setting.

Implementation – action required

The protocol creates a set of new imperatives for all signatories to work together across the region to:

- provide and maintain an up to date list of relevant contacts
- notify other local authorities when children in care (CiC) are placed in another authority (within five working days)
- further develop informed joint decision-making arrangements at a local level that takes full account of children's 'looked after' status and circumstances
- consultation between 'host' and 'home' local authorities/police authorities.

Signatories:

Local Authority Chief Executives

Brighton and Hove,
East Sussex,
Hampshire,
Isle of Wight,
Kent,
Medway,
Portsmouth,
Southampton,
Surrey,
West Sussex

Police Service Chief Constables

Hampshire,
Kent,
Surrey,
Sussex.