

Greater Manchester Joint Agency Protocol to Assist in Dealing with Offences in Residential Children's Care Homes

Introduction

This protocol is intended to assist staff in residential children's care homes, the police and the CPS, in determining an effective and proportionate response to juvenile offending behaviour within care homes. This includes incidents of a criminal nature allegedly committed by a young person in the care home where he or she lives.

It does not include reports of:

- Offences committed outside the home
- Young people reported missing from the home

This protocol should be read in conjunction with the following documents,

- Children's Homes Regulations 2001 (www.doh.gov.uk)
- National Minimum Standards, s23 Care Standards Act (www.doh.gov.uk)
- The CPS: Youth Offenders (www.cps.gov.uk) (Appendix A)

The first two policies above establish standards of care within care homes. All care homes whether run privately, or by a local authority, must have a written behaviour management policy. They should also have procedures and guidance on police involvement in the home, which have been agreed with the local police.

The CPS protocol is guidance to assist prosecutors in determining where the public interest lies, when it is alleged that a looked after young person has committed an offence in a care home.

It is anticipated that the guidance contained within this new GM protocol will act as a framework for ensuring standardisation and best practice for looked after children across Greater Manchester.

The new GM joint agency protocol aims to:

- Strike a balance between the rights and needs of children in care homes, care home staff, the local authority and private care homes.
- Inform decisions to instigate police action and the CPS right to prosecute.
- Underline the importance of regular and effective liaison between care home staff and the local police.

Whilst it is accepted that care home staff have a duty to report known or suspected crimes to the police, the staff will need to use their judgment about where this threshold lies, particularly when the information to hand is minimal and the crime or suspected crime is of a minor nature. All residential children's care home staff need to consider both the nature and seriousness of the incident before deciding to involve the police immediately, or at a later stage, or to involve them at all. The fact that care home staff report an incident does not mean that the police will follow a pre-determined course of action, or in some cases any action at all. Wherever possible the process to be taken will be determined following discussions by all concerned, including the young person in order to determine the most appropriate course of action.

Categories of Response to Incidents

Appendix B outlines the most common incidents in care homes where police involvement might be appropriate.

This protocol identifies three categories of response:

- Serious (See Appendix C)
- Not serious (See Appendix B)
- Internal

‘Serious’ Incidents (immediate police response required)

These include all offences shown at Appendix C and incidents of violence requiring an immediate police response, where young people or staff, are at risk of immediate serious physical harm and where there is a risk of substantial damage to property or risk of significant disorder within the home. In such situations, the senior member of staff on duty/shift leader should contact the police, either via the main force switchboard or the 999 system.

‘Not Serious’ Incidents (no immediate police response required)

These include incidents where no immediate police response is required, for example where a physical assault or damage has occurred and there is no risk of reoccurrence/ significant harm to people, or incidents of theft. The incident should be reported to the home manager who then has the responsibility of identifying the appropriate course of action. In addition, staff within the home should inform the young persons social worker at the first opportunity.

In order to avoid any unnecessary reporting of incidents to the police, if the home manager decides (and/or the victim wishes) that formal police involvement is necessary, this should preferably be via the designated police officer at a liaison meeting which should be held on a regular basis (timescale agreed locally).

‘Internal’ Incidents (no police response required)

It is anticipated that relatively minor incidents will be addressed using routine residential children’s care home procedure/policy. No police response is required.

Incident liaison meeting

A liaison meeting should be held on a regular basis between care home staff and the local police to discuss;

- Internal action by care home staff with no police involvement
- Other incidents to be brought to the attention of the police
- The progress of current formal police investigations and any resulting action

This discussion should take place at the home and a record made of the outcomes.

The timescale of the meeting and delegated representation should be agreed locally. Where possible police representation should be a local Neighbourhood Policing Team (NPT) officer.

When a situation involving a looked after young person is to be discussed at the liaison meeting, the young persons social worker (case manager) should be informed, as they may wish to take part in the discussion.

If the need for discussion of an incident is more immediate, the home manager should arrange for the local NPT officer to visit the home as soon as possible. If this officer is

unavailable, the home manager should contact the local police control room to request a delayed or scheduled response visit by another NPT officer or if necessary a response officer.

In certain circumstances, preservation of evidence may be an issue and care home staff will need to ensure that reasonable steps are taken to retain articles relevant to any criminal reports. The local police should provide guidance on the preservation of evidence.

The liaison meeting will also provide an opportunity to share more general views and information and to develop a better understanding of each agency's responsibilities and practices.

It is not the intention of this protocol to restrict the options available to care home staff and police officers, but to emphasise the importance of flexibility in determining the most suitable option for dealing with incidents involving looked after children

Recording of Incidents

Recording Incidents by Care Home Staff

It is necessary for incidents within residential children's care homes to be accurately recorded to provide an informed history on the young person. This information then assists any assessments and liaison meetings.

All the incidents must be recorded in the young persons personal file and cross-referenced in the home log book. This provision also applies to incidents discussed at the regular liaison meeting with the police.

Recording of Incidents by the Police

The 'Home Office Counting Rules for Recorded Crime (HOCR)' determine when a crime should be recorded. However this policy recognises that in some cases an alternate method may be available and a more appropriate way to deal with the situation than via judicial process, even though a police officer may have a crime confirmed to them. The key is that the decision making process both before and during discussions between the parties involved must be documented to negate the need for a crime report.

If the criteria contained in this protocol are applied and the police investigate the report, a crime report must be recorded as soon as that decision has been made or as soon as is reasonably practicable thereafter. Any delay in the recording of a crime must be contained in auditable detail on the FWIN or if there is no FWIN, in the initial report contained on the crime report.

In any case where a decision whether to record a crime or not cannot be reached, the Divisional Crime Manager should be consulted. In all cases, the Force Crime Registrar will be the final arbiter.

It is important to remember that each care home has the responsibility of care towards the resident young persons, with their welfare interests being paramount. Therefore, the requirement to record offences should be considered in conjunction with the desire to avoid unnecessary criminalisation of parties to the incident.

Recording of 'serious' incidents by the Police

Given the immediate response aspect of this category, offences that come to the notice of the attending police officer would be of such a nature as to require recording, unless there was exceptional extenuating circumstances.

Recording of 'not serious' incidents by the Police

'Not serious' incidents should generally be left until the next liaison meeting to discuss the required course of action. However if the Home Manager considers the incident serious enough to warrant police investigation prior to the next scheduled liaison meeting they should either contact the local Neighbourhood Policing Team to arrange a visit or phone the police control room to request a police visit.

The usual time for the submission of a crime report under NCRS is within 72 hours of report to the police and at maximum within 7 days. It is therefore expected that the liaison meeting takes place at least once weekly.

Disposal/Finalisation of a recorded crime

All incidents recorded, as a crime by the police will be investigated. If during the course of the investigation a suspect is identified, the crime may be progressed and finalised by either;

- An existing disposal e.g. reprimand, PND, charge
- Restorative justice disposal, RJD

Recorded crimes that are disposed of by an existing disposal

It is anticipated that;

'Serious' incidents resulting in a recorded crime will be dealt with formally, by an existing disposal method i.e. an investigative process that may be finalised with a formal disposal e.g. penalty notice for disorder, reprimand, final warning or charge.

'Non serious' incidents resulting in a recorded crime may also be dealt with formally, in some circumstances.

Each incident will be assessed on it's own merits. Factors such as the nature of the incident, the suspects offending history, previous similar incidents by the same suspect, the wishes of the victim and professional advice from care home staff, social worker, YOT officer, will determine the appropriate response.

Recorded crimes that are disposed of by a Restorative Justice Disposal

'Non serious' incidents resulting in a recorded crime may also be dealt with informally, by an RJD, in certain circumstances. This includes a 'serious' incident downgraded to a 'non serious' incident (based on reasoned evidence documented on the crime report)

The authority of a police Inspector or above is required for a restorative justice disposal. The crime report disposal code **M5a** 'suspect identified, but processed via other formal police scheme', should be used ('SD' page, management code field) and the following information included on the crime report.

- The authorising police officer
- Rationale of decision for an RJD
- The name of home manager/care home worker involved in the decision

- The action taken

The disposal method should be recorded in free text on the 'SU' page as '**RJD – Care Home Protocol**'

Note: A crime will NOT be written off, once recorded unless one of the criteria contained in Section C of the HOCR is met.

Restorative Justice Process

An RJD involves communication carried out between the offender/s and the victim/s. It can be done in two ways;

- **Indirectly** involves a mediator (usually a police officer) acting as a go-between for both parties i.e. speaking to both parties separately and concluding with an agreement from both that the incident has been resolved
- **Directly** involves a face-to-face meeting between the two relevant parties, in the presence of a mediator. It can involve one mediator from an agreed agency, or representatives from other agencies involved in the case. This form of mediation is often called 'conferencing'.

This process allows both parties to give their own perspective and express their feelings about the offending behaviour as well as discuss present or future concerns. It is usual that an apology is given and some reparation made which adds to the realisation by the offender of the consequence of their behaviour. It may also help the victim come to terms with their experience.

An RJD within residential children's care homes should be instigated in the following circumstances:

- The care home staff member/police officer have used their discretion and classified an incident as 'not serious' or 'serious incident' that has been downgraded using the protocol guidelines
- It has been identified by the care home/police officer that an RJD would be the best outcome for the young person to help prevent the escalation of certain behaviour into more serious behaviour.
- Assessments will then be completed to address the victim needs and the needs of the offender (primarily for a conference meeting).
- Consensual agreement by all parties that the matter can be dealt with in this way.

Then either;

- A 'conference' meeting will be convened, with all parties affected by the young persons behaviour invited to attend.

Or

- Separate discussions with all parties will be facilitated

In both cases this form of restorative justice can be facilitated by a member of staff from any agency e.g. care home staff, YOT worker, police officer, or social worker. This should be agreed by all agencies involved and will take into consideration the most suitably qualified, available person (particularly relevant for a conference meeting).

At the conclusion of the process there must be consensual agreement by all parties that the incident has been resolved

Following the liaison meeting, incidents that are considered suitable for an internal disposal by care home staff or another agency, shall not be recorded as crimes by the police. However, the home manager should record full details and decisions as a record on the child's file, cross referenced, to the home logbook.

Monitoring the Protocol

To evaluate the implementation and working of this protocol, the local police and home managers should be aware of its impact, in particular;

- The number of incidents dealt with internally
- The number of incidents dealt with jointly with the police resulting in a formal disposal
- The number of incidents dealt with jointly with the police resulting in an RJD disposal

This protocol has been agreed by the Greater Manchester Local Criminal Justice Board. The following signatory sheet is for local signatories, if required.

Signed: _____

Dated: _____

Name: _____

For Greater Manchester Police

Signed: _____

Dated: _____

Name: _____

For Children's Home Manager /Children and Young People Department

Signed: _____

Dated: _____

Name: _____

For Youth Offending Service

Signed: _____

Dated: _____

Name: _____

Greater Manchester CPS

Crown Prosecution Service—Response to Offending in Residential Children’s Care Homes

If agreed that prosecution should be sought for an incident involving a looked after child, the following factors will be considered by the CPS when deciding to prosecute, and should be included in any prosecution file presented to the CPS:

- The disciplinary policy of the home.
- An explanation from the home regarding their decision to involve the police, which should refer to the procedures and guidance on police involvement.
- Information from the home about the recent behaviour of the young person, including similar behaviour and any incidents in the young person's life that could have affected their behaviour, any history between the young person and the victim, any apology or reparation by the young person, history of the incident and any action under the disciplinary policy of the home.
- The views of the victim, including their willingness to attend Court to give evidence and/or participate in mediation or other diversionary programme.
- The views of the key worker, social worker, counsellor or CAMHS worker on the effect of criminal justice intervention on the young person, particularly where the young person suffers from an illness or disorder.
- Any explanation or information about the offence from the 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.

Specialists should consider all of the aggravating and mitigating features when deciding on the appropriate outcome.

Aggravating features include:

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

Mitigating features include:

- The damage or harm caused is at the lower end of the scale and has been put right
- Appropriate action has already been taken under the disciplinary procedure of the home or other 'informal' disposal
- Genuine remorse and apology to the victim
- The behaviour is a symptom of a disorder or illness that cannot be controlled by medication or diet. (Refer also to mentally disordered offenders, elsewhere within the CPS's guidance). Care should be taken where it appears that the youth has deliberately refused medication or deliberately consumed a substance knowing that his or her behaviour will be affected.
- Isolated incident or incidents which are out of character

- The young person is under extreme stress or appears to have been provoked and has overreacted

The reasons for the charging/diversion decision should be clearly recorded and show the factors that have been considered by the home manager/police officer/social worker/YOT worker etc, to determine how the public interest is satisfied.

Example of Incidents Reported to the Police

Violence by a child or young person to another

Incidents between residents within the home can range from minor disagreements through to serious assaults where physical injury is caused. Having two vulnerable parties can complicate such incidents. Care home staff will need to ensure that internal health and safety reporting and anti-bullying procedures are followed.

Attendant factors for this category of offences are listed below (NB the list does not reflect any order of priority).

- The wishes of the victim
- Severity of injury sustained/nature of threat received by victim
- Probability of a repeat incident
- Previous relationship between victim and offender
- Potential impact on the child/ young person following formal police involvement
- Effectiveness of police action/court proceedings
- Future best interest of both parties
- The message that such action will send to other residents
- Availability of alternative courses of action (e.g. conflict resolution approaches) – with the consent of the victim

Violence to Staff by a Young Person

Violence towards care home staff can vary from verbal threats to physical acts amounting to assault. Whilst each home has the responsibility of care toward the residents, their welfare needs must be balanced with the rights of staff and not be subjected to violence in the course of their duties. Such incidents are affected by factors similar to those listed above.

Where there is no immediate continuing threat of violence, it is in the best interests of the staff member to take time to discuss and consider possible options. **This, however, does not remove the individual's right to involve the police.**

Following such incidents, it is important that staff utilise standard debriefing processes and follow care home policy and procedure for reporting security incidents.

Note: Reports of ANY offence where the suspect is a staff member is NOT covered by this policy

Criminal Damage within the Home

The majority of incidents currently reported to the police involve damage to the care home. It is important to see these in the context of the needs of the child and whether involving the Police is an effective and proportionate response. Factors to consider are:

- Background history of the child
- The child's communication skills and preferred method of communication
- Level/value of damage caused
- Previous incidents of a similar nature by the same child or young person
- Suitability and effectiveness of police involvement
- Impact of police involvement on the child's overall plan

- Message sent to other residents
- Availability of alternative courses of action (e.g. mediation with the consent of the victim).

Theft within the Home

Most offences within a home are likely to be of low value, although it should be emphasised that value is a subjective issue relative to a victim. Factors to be considered include:

- Wishes of the victim
- Nature and seriousness of the allegation
- Requirement for formal investigation (e.g. insurance claim requires a crime reference report within 24 hours)
- Availability of alternative courses of action (e.g. mediation)

Criminal Damage to Staff Cars and Property

Factors for consideration would be similar to those listed above together with:

- The nature and seriousness of the allegation
- Requirement for formal investigation (e.g. insurance claim)
- Wishes and best interest of the victim
- Availability of alternative courses of action.

Disorder in or Around the Home

The area of disorder is subjective and requires judgment by staff to avoid unnecessary police involvement for minor infringements of discipline. The main factors, which should be considered, are:

- Nature and seriousness of the allegation
- Risk of threat of violence
- The wishes of and the impact on the immediate community
- The involvement of other agency (e.g. Local Housing Officer, Outreach Youth Worker)
- The availability of alternative courses of action (e.g. mediation)

Substance Misuse

The misuse of controlled drugs within a care home is a serious issue and it is essential that the response is prompt and effective. In responding to incidents, care home staff will be guided by the Government's 'Tackling Drugs Together Strategy', which proposes collaborative action to:

1. Reduce the acceptability and availability of alcohol and other drugs to young people.
2. Minimise the health risks and other damage associated with substance use by the young people.
3. Increase the safety of communities from drug related crime.

Care home staff will need to balance these principles with their duty of care for the young people in the home and their role in managing young people's behaviour as part of their responsibilities, as well as their responsibilities to the wider community. In practice, care home staff should inform the police immediately if it is established that a young person is using illegal substances or illegal substances are found on the premises. It is important that all action taken is recorded.

All materials should be removed from the young person. Drugs and drug related materials should be stored securely before handing to the police. These should not be disposed of by staff but can be handed over for disposal without identifying the name of the young person and no further police action will be undertaken. The signature of the police officer removing the materials should be obtained.

A record of the removal should be kept by staff, which includes:

- A name of the person removing the material
- A description of the material
- The circumstances of the removal
- The time and date of the removal
- The time and date the material is placed into secure storage
- The signature of the person putting the article into storage countersigned by a second member of staff
- The time and date of notification to the police, and the message number provided by the police control room
- The time and date the material was removed by the police
- The name and signature of the police officer removing the material

To ensure that controlled substances are not being stored in a care home any longer than is necessary it is important that every effort is made to ensure the police attend at the earliest convenient time.

Staff should first contact the local police control room, to arrange for the area officer to attend the home. If this officer is not available, then arrangements should be made for another officer to attend.

The officer attending is then responsible for recovering the suspected controlled substance in to police possessions and if appropriate, conducting any subsequent investigation in line with existing police policy.

Staff can dispose of alcohol and canisters but it is important that the disposal is witnessed and a record kept, which includes:

- A name of the person removing the material
- A description of the, material
- The circumstances of the removal
- The time and date of the removal
- The time and date of disposal
- The name of the person instigating the disposal

Classification of 'Serious Incidents':-

- (a) treason;
- (b) murder;
- (c) manslaughter;
- (d) kidnapping;
- (e) causing an explosion likely to endanger life or property (Explosives Substances Act 1883, s 2);
- (f) possession of a firearm with intent to endanger life, use to resist arrest or carrying a firearm with criminal intent (Firearms Act 1968, ss 16, 17 and 18);
- (g) hostage taking (Taking of Hostages Act 1982, s 1);
- (h) hijacking (Aviation Security Act 1982, s 1);
- (i) torture (Criminal Justice Act 1988, s 134);
- (j) causing death by dangerous driving (Road Traffic Act 1988, s 1);
- (k) causing death by careless driving when under the influence of drink or drugs (Road Traffic Act 1988, s 3A);
- (l) endangering safety at aerodromes, hijacking ships, seizing or exercising control of fixed platforms (Aviation and Maritime Security Act 1990, ss 1,9 and 10);
- (m) hijacking Channel Tunnel trains, or seizing or exercising control of the tunnel system (Channel Tunnel (Security) Order 1994, arts 4 and 5);
- (n) taking, making etc indecent photographs or pseudo-photographs of children (Protection of Children Act 1978, s 1);
- (o) the publication of obscene matter (Obscene Publications Act 1959, s 2);
- (p) an offence under the Customs and Excise Management Act 1979, s170, of being knowingly concerned, in relation to any goods, in any fraudulent evasion or attempt at evasion of a prohibition in force concerning importation of indecent or obscene articles;
- (q) rape (Sexual Offences Act 2003 (SOA 2003), s 1);
- (r) assault by penetration (SOA 2003, s 2);
- (s) causing a person to engage in sexual activity involving penetration without consent (SOA 2003, s 4);
- (t) rape of a child under thirteen (SOA 2003, s 5);
- (u) assault of a child under thirteen by penetration (SOA 2003, s 6);
- (v) causing or inciting a child under thirteen to engage in a sexual activity involving penetration (SOA 2003, s 8);
- (w) sexual activity with a person with a mental disorder impeding choice, where the touching involved penetration (SOA 2003, s 30);
- (x) causing or inciting a person with a mental disorder impeding choice to engage in sexual activity involving penetration (SOA 2003, s 31)
- (y) causing or allowing the death of a child or vulnerable adult (Domestic Violence Crime and Victims Act 2004, s 5).

Also any offence specified in the Proceeds of Crime Act 2002 (PCA 2002), Sch 2, para 1 (drug trafficking offences) or any offence under PCA 2002, s 327, 328 or 329 (certain money laundering offences).

Any other offence is serious only if its commission has led to any of the consequences set out below, or is intended to lead to any of those consequences:

- (a) serious harm to the security of the State or to public order;
- (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
- (c) the death of any person;
- (d) serious injury to any person;
- (e) substantial financial gain to any person; and
- (f) serious financial loss to any person.

If any other offence consists of making a threat, it is 'serious' if the consequences of carrying out the threat would be likely to lead to one of the consequences set out above at (a) to (f).

The term 'injury' includes any disease and any impairment of a person's physical or mental condition.

Financial loss is 'serious' for the purpose of the section if, having regard to all the circumstances, it is serious for the person who suffers it. Whether or not a loss, actual or intended, is serious will depend partly on the victim's circumstances. A theft of £1,000 worth of property from a millionaire would perhaps not represent serious financial loss in the minds of some justices, whilst the loss of £100 worth of property by a pensioner could be considered to be serious in those circumstances.

RESIDENTIALCHILDRENS HOMES: CATEGORIES OF INCIDENT RESPONSE

This protocol must be followed when any member of the staff is considering contacting the police.

