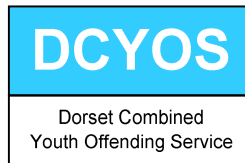


A Pan Dorset Protocol to Reduce Criminalisation of Children and Young People in Care



**HM Courts
& Tribunals
Service**



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1. Our Challenge

- 1.1 Children and young people in care are more than twice as likely to be cautioned or convicted of an offence as their peers (Looked After Children and Youth Justice, Department for Education, 2014). With less than 1% of children in England entering the care system, why is it that half of the children detained in Youth Offending Institutes are, or have been, looked after? (Prison Reform Trust 2011).
- 1.2 Amongst children and young people in care, those living in children's homes are much more likely to be criminalised (19.2% of 13-15 year olds in children's homes, compared to 3.2% of those in other care settings - Howard League, 2016).
- 1.3 We have an over representation of children and young people in care in our local youth out of court disposal system. Over 6% in total rising to 14% for girls (2014/15).
- 1.4 Local authorities seek the best life outcomes for the children in their care. It is recognised that criminalisation can be a barrier to successful transition into adulthood and to future life prospects.
- 1.5 Our challenges are to:-
 - recognise and minimise the pre-existing risk factors that place children and young people in care at greater risk of offending
 - protect children and young people in care from entering the criminal justice system as a response to their vulnerability, by providing them with additional support and protection
 - develop a set of principles that ensure that, where a criminal justice outcome is warranted, the strategy allows the use of professional discretion to ensure the outcome is not disproportionate to the circumstances.
- 1.6 Research shows that offending by children and young people in care is associated with some common factors: offences committed in residential settings; offences against perceived 'authority' figures; multiple care placements; poor compliance with court orders; and a significantly higher rate of offending by females in care, compared to females in the wider population.
- 1.7 A reduction in offending by children and young people in care will only be achieved through improved joint working between all agencies and all local authorities across Dorset, to understand and respond to pre-existing risk factors.
- 1.8 Police Forces have a requirement to review their practices and procedures in relation to how they respond to crimes committed by children and young people in care, as part of the National Police Chief Council's (NPCC) Children and Young Person's strategy.
- 1.9 The Children's Homes (England) Regulations 2015 set out the requirement for Homes to agree procedures and guidance with local police, to reduce police involvement and criminal responses to behaviour in children's homes. Children should not be charged with offences resulting from behaviour that would not lead to police involvement if it occurred in a family home.
- 1.10 In Dorset, local arrangements have been developed between individual children's homes and their Neighbourhood Policing Team. Currently Dorset Police use out of court disposals where possible for offending by children and young people in care. These existing practices are not supported by a protocol or over-arching strategy.

2. Introduction

- 2.1 This protocol represents a pan-Dorset multi-agency approach to prevent and reduce offending by children and young people in care. It has been designed to provide an overarching set of principles to inform the processes that will ensure that any child or young person in care within the region is afforded the same protection and consideration, whatever their home local authority. This applies to all placement settings and should include all children and young people in care who are in kinship care and those living independently, as well as those in residential and foster care. The main aim is to ensure that children and young people in care are kept out of the criminal justice system wherever possible and that those who do enter it are provided with services that reduce the likelihood of them reoffending. Whilst currently a Dorset only protocol, it has been developed to dovetail with the best practice work of the South-East England protocol, with the expectation that there will be a nationwide protocol in the near future.
- 2.2 This protocol aims to reduce the criminalisation of children and young people in care by encouraging the use of alternative resolution approaches wherever possible within the care setting, in response to low level incidents. Restorative Justice is a process wherein a victim can meet with and/or inform an offender of the impact of their behaviour and an offender is given an opportunity to take responsibility for his or her actions and, where/if possible, make amends. Restorative Justice activities are shown to be more successful when they form part of a wider restorative approach.
- 2.3 This document builds upon the existing good practice within children's homes and foster placements across Dorset, and sets out the roles and responsibilities of agencies in managing and reducing the offending of children and young people in care. This document provides particular guidance to carers about when to involve the police.
- 2.4 The principles contained within this document will help to ensure a consistent response, aiming to strike a balance between the rights and needs of victims, the rights and needs of children and young people in care, the rights of staff and foster carers and the decision to involve the police and/or Crown Prosecution Service.
- 2.5 This protocol underlines the importance of regular and effective liaison between children's homes' staff and managers, foster carers, children's social care, youth offending service and police, in fostering good relationships and working together to reduce the criminalisation of children and young people in care.
- 2.6 The primary objective is for agencies to work together to reduce the criminalisation of children and young people in care, prioritising the welfare, safety and well-being of children.

3. Scope

- 3.1 This protocol covers the three top tier local authorities within Dorset (Bournemouth Borough Council, Dorset County Council and the Borough of Poole) and encompasses the following:
- Children's homes (Local Authority and Independent)
 - Foster carers (LA, Independent & Kinship)
 - Children's Social Care
 - Police Decision Makers

- Dorset Combined Youth Offending Service
- Crown Prosecution Service
- Her Majesty's Courts & Tribunals Service

3.2 It covers incidents that occur:

- in the child's place of residence committed by children and young people who reside within that care setting
- against the care setting and/or the carers and/or the workers within it and/or any other young person who resides there.

3.3 This protocol supports the Department for Education Quality Standards for Children's Homes and Children's Homes Regulations, which recognise that each children's home has a responsibility of care for a young person with their welfare interests being paramount. Both documents support that each children's home must have a clear written behaviour policy that all staff understand and apply at all times, which includes supporting positive behaviours, de-escalation of conflicts, discipline, control and restraint. Consequences of unacceptable behaviour should be made clear to staff and children and must be appropriate to the age, understanding and individual needs of the child. Regulation 35 of the Children's Home Regulations requires that the registered person should agree with their local police force procedures and guidance to reduce unnecessary police involvement in managing behaviour and criminalisation of behaviours.

3.4 There are two types of children's homes, those run by the local authority and independent children's homes. Independent homes may receive children from anywhere across the country and whilst the receiving local authority area should be informed of these young people they will not necessarily have detailed information on each child. The placing authority remains the responsible corporate parent for the child, not the 'host' authority.

3.5 Guidance should also be provided to foster carers with regard to management of behaviour and the resolution of incidents in agreement with the allocated social worker, consistent with this protocol.

4. Key Principles

4.1 Every effort should be made to avoid the unnecessary criminalisation of children and young people in care.

4.2 It is every professional's responsibility, when working with children and young people in care, to strive to understand the underlying causes of a young person's behaviour.

4.3 Whilst the aim of the protocol is to reduce the criminalisation of children and young people in care, it should also be remembered that victims have a right to be protected from all types of offending. Therefore, it is important that the rights and needs of victims are given due consideration in any decision making process relating to the offending of a child or young person in care.

4.4 Restorative approaches should underpin any response and the views of the victim or communities affected should be taken into account.

4.5 All professionals should pursue an integrated multi-agency approach to reduce the offending and criminalisation of children and young people in care.

4.6 Those children and young people in care already within the criminal justice system also need protection from escalation and these principles apply to them equally.

- 4.7 All professionals have a duty to ensure that any special needs presented by children and young people in care, such as those with mental illness, learning difficulties or speech and language difficulties, receive an appropriate response to their behaviour.
- 4.8 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.
- 4.9 Corporate parenting boards together with Local Safeguarding Children's 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.
- 4.10 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 without the involvement of police wherever possible.
- 4.11 When this policy has been applied and police have attended, for instance where there was concern about immediate safety, then the police are able to use their discretionary powers allowing the care setting to deal internally using restorative principles where appropriate.
- 4.12 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.
- 4.13 In cases investigated by the police, the preference is for interviews to be conducted on a voluntary attendance basis, with an appropriate adult arranged by the home or relevant professional. Care providers should have plans in place to allow the child to be managed within the home. The police will only arrest when there is a need to secure evidence that would otherwise be lost, or where the offence is so serious that an arrest is justified. The decision to arrest is based on criminal justice reasons, not as a response to accommodation problems.
- 4.14 Where there is a named police link officer for the residential setting, that officer should be involved in the decision making process. The link officer will maintain regular contact with the care setting and can provide ongoing advice, but crimes should not be reported directly to them.

5. Response to Specific Incidents

Deciding whether or not to involve the Police

- 5.1 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 and B](#).
- 5.2 Any incident reported to the police which amounts to a crime will be recorded against an identified victim. Understanding this should allow managers, both in the care setting and within children's social care, to make informed judgements as to which incidents they wish to report to police. The following principles will underpin this decision-making:
- nature and seriousness of the allegation
 - severity of the injury sustained/nature of threat received by the victim
 - wishes and best interest of the victim

- 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
- availability of alternative courses of action, e.g. restorative approaches with the consent of the victim, referral to the Youth Offending Service
- level/value of damage caused.

5.3 Any offences reported or referred to Police will be recorded by the Police in accordance with the National Crime Recording Standard (NCRS).

National Crime Recording Standard

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:

a) 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)

AND

b) there is no credible evidence to the contrary.

6. Different Levels of Incident/Crime

6.1 This protocol identifies three levels of incident and outlines the expectation of how each level should be dealt with:

- Level 1 – Low (Internal resolution)
- Level 2 – Non-serious (Either way dependent on circumstances)
- Level 3 – Serious (Always report to Police)

6.2 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 interest 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.

6.3 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.

6.4 **Level 1 – Low (*Internal resolution*)**

6.5 It is anticipated that level 1 incidents are dealt with internally via the use of the setting's policies and procedures.

6.6 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.

6.7 However, there may be circumstances where a Level 1 incident warrants police involvement, for example a prolonged incident or where a children and young people in care has committed the same behaviour many times and the setting has advised that any further repeats would result in police involvement. Contact should be made at www.dorset.police.uk/do-it-online/. Alternatively there is the option to call 101.

6.8 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.

6.9 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.

6.10 **Level 2 – Non-serious (*Either way dependent on circumstances*)**

6.11 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.

6.12 These incidents should be reported to the Registered Manager, who has the responsibility for identifying the appropriate course of action.

6.13 Staff within the home should also notify the child/young person's social worker at the earliest opportunity.

6.14 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.

- 6.15 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.dorset.police.uk/do-it-online/. Alternatively there is the option to call 101.
- 6.16 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.
- 6.17 The setting should consider a referral to the Youth Offending Service for advice, guidance and support.
- 6.18 Examples of level 2 include, subject to the specific circumstances:-
- Second occasion of possession of Class B or C drugs
 - Persistent level 1 type behaviours
 - Possession of Class A 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.
- 6.19 **Level 3 – Serious (Always report)**
- 6.20 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, or
 - 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 (NB disclosure of past sexual abuse or exploitation does not require a 999 response).
- 6.21 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.
- 6.22 Level 3 offences which do not require an immediate response should be reported at www.dorset.police.uk/do-it-online/. Alternatively there is the option to call 101.
- 6.23 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.

7. Police Roles and Responsibilities

- 7.1 Any offences reported or referred to Police will be recorded in accordance with the National Crime Recording Standard (NCRS) as set out in section 5.3.
- 7.2 Where this policy has been applied and police have attended, for instance where there was concern about immediate safety, then the police are able to use their discretionary powers allowing the care setting to deal internally using restorative principles where appropriate.
- 7.3 Neighbourhood Policing, CSE and missing person's 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. The Neighbourhood Inspector should establish regular liaison meetings with both local authority and private children's homes in order to implement the principles of this protocol.
- 7.4 When Police complete an investigation into a youth, the outcome of the case will be subject to an evidential review by a suitably trained officer. Police use a national Gravity Factor system to assist in this process. Any case with a Gravity Factor of 3 or below should be submitted to the Youth Out of Court Disposal team via a Youth Referral Form for consultation and consideration of the appropriate outcome.
- 7.5 Following development of this protocol agreement has been reached to provide an enhanced decision making process for children and young people in care. This process will now include the care manager/social worker (for fostered children and young people in care) and the Police single point of contact as part of the decision making process.
- 7.6 It is the responsibility of the investigating officer to ensure that a Public Protection Notice 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.
- 7.7 In cases where a child or young person in care declines to make an admission to an offence but does not deny it, the investigating officer should also refer to the Youth Out of Court Disposal Team for advice.
- 7.8 Where a child or young person 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 – Crown Prosecution Service guidance" should be actively applied. Section 9 of this protocol outlines the steps to be followed by the CPS for offences in children's homes.
- 7.9 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.

Recording of Incidents by Police

- 7.10 Offences that come to police notice through involvement in children's home must be recorded in line with NCRS criteria (see 5.1).
- 7.11 A crime should be recorded as soon as the decision to do so has been made (or as soon as possible afterwards).

8. Information Sharing

- 8.1 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. This protocol sets out the principle that effective joint working and an integrated approach between services is vital in the prevention of offending and protection of

vulnerable young people. It is therefore necessary that agencies develop an environment of information sharing that demonstrates to young people agencies working together and keeping each other informed.

9. Prosecution of Incidents by Crown Prosecution Service (CPS) Offending Behaviour in Children's Homes

- 9.1 The decision to prosecute looked after children for low level offences committed within a children's home 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.
- 9.2 The youth specialist should apply the CPS guidance on Offending Behaviour in Children's Homes in conjunction with the Code for Crown Prosecutors, CPS Policy Statements and legal guidance.
- 9.3 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.
- 9.4 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.
- 9.5 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.
- 9.6 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.
- 9.7 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.
- 9.8 Factors that should be considered include:
 - Behaviour Management policy of the home
 - An explanation from the home regarding their decision to involve the police
 - Information from the home about the recent behaviour of the child or young person including similar behaviour, any incidents in the child or young person's life which could have affected their behaviour, any history between the child/young person and the victim, any apology or reparation, history of the incident and any action taken under the disciplinary policy of the home
 - Views of the victim, including their willingness to attend court to give evidence and/or participate in a restorative justice or other diversionary programme
 - Views of the key worker, social worker, counsellor and CAMHS worker on the effect of a criminal justice intervention on the child or young person, particularly where the child or young person suffers from an illness or disorder

- Any explanation of information about the offence from the child or young person
- Provided the child or young person wishes it 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 these issues.

10. Illegal Substances

- 10.1 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, is of serious concern for their emotional, mental and physical well-being, and in terms of criminal offences and intelligence.
- 10.2 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
- 10.3 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.dorset.police.uk/do-it-online/. Alternatively there is the option to call 101 or 999, dependent on circumstances.
- 10.4 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
- 10.5 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.
- 10.6 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.

11. Recording of Incidents

By Residential Staff

- 11.1 All incidents require accurate recording within an incident log for residential children's homes, so as to provide informed histories on the children and young persons looked after, assisting with assessments and liaison meetings.
- 11.2 All incidents must be recorded in the personal file of each young person and entered in the home's day book/incident log. Risk assessments should be reviewed. This provision also applies to incidents discussed through regular liaison with local Neighbourhood Policing Teams.

By Foster Carers

- 11.3 It is necessary for incidents within foster care placements to be accurately recorded, so as to provide informed histories on the children and young persons looked after, assisting with assessments and liaison meetings.
- 11.4 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.

12. Placements out of area

- 12.1 Some of our children and young people in care reside in out of area placements. The equivalent local protocols will apply in respect of police involvement and decision-making for behaviour in those care settings. When commissioning an out of area placement, our home local authorities will seek confirmation that the setting is committed to using non-criminal responses to behaviour in the care setting. This commitment will form part of the placement contract
- 12.2 Some children and young people in care from other areas are placed at settings in Dorset, Bournemouth or Poole. This protocol applies to those settings in respect of all the young people that they accommodate.

13. Restorative Justice and the Restorative Approach

- 13.1 Restorative Justice has been shown to be a constructive way to repair harm and to enable the victim and the offender to move forward. Best practice suggests that RJ responses to specific incidents are more effective when they occur in the context of a more widespread restorative approach, and where both parties perceive the facilitator to be a neutral party. Restorative practices include opportunities for the young person to repair harm that they have caused.
- 13.2 For low level incidents it may be suitable for another staff member to facilitate the RJ meeting, provided the young person has confidence in the worker'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.

14. Governance and Monitoring

- 14.1 The Dorset Combined Youth Offending Service Partnership Board has a responsibility to ensure that effective local arrangements are in place to prevent and reduce offending by young people. As such, that Board will provide oversight of the effectiveness of this protocol.
- 14.2 Corporate Parenting Boards, the Local Children's Safeguarding Boards and the Dorset Criminal Justice Board 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.
- 14.3 The different agencies that work under this protocol will collect their own data to monitor the effectiveness of their work to prevent offending by children and young people in care. A regular meeting of these agencies will scrutinize this data, as well as reviewing the effectiveness and practice issues related to these procedures.

15. Review

15.1 This protocol will be jointly owned and reviewed. Next review date is 30/04/18.

Signatories

Date

Dorset Police

Office of the Police and Crime Commissioner Dorset

Crown Prosecution Service

Dorset County Council

Bournemouth Borough Council

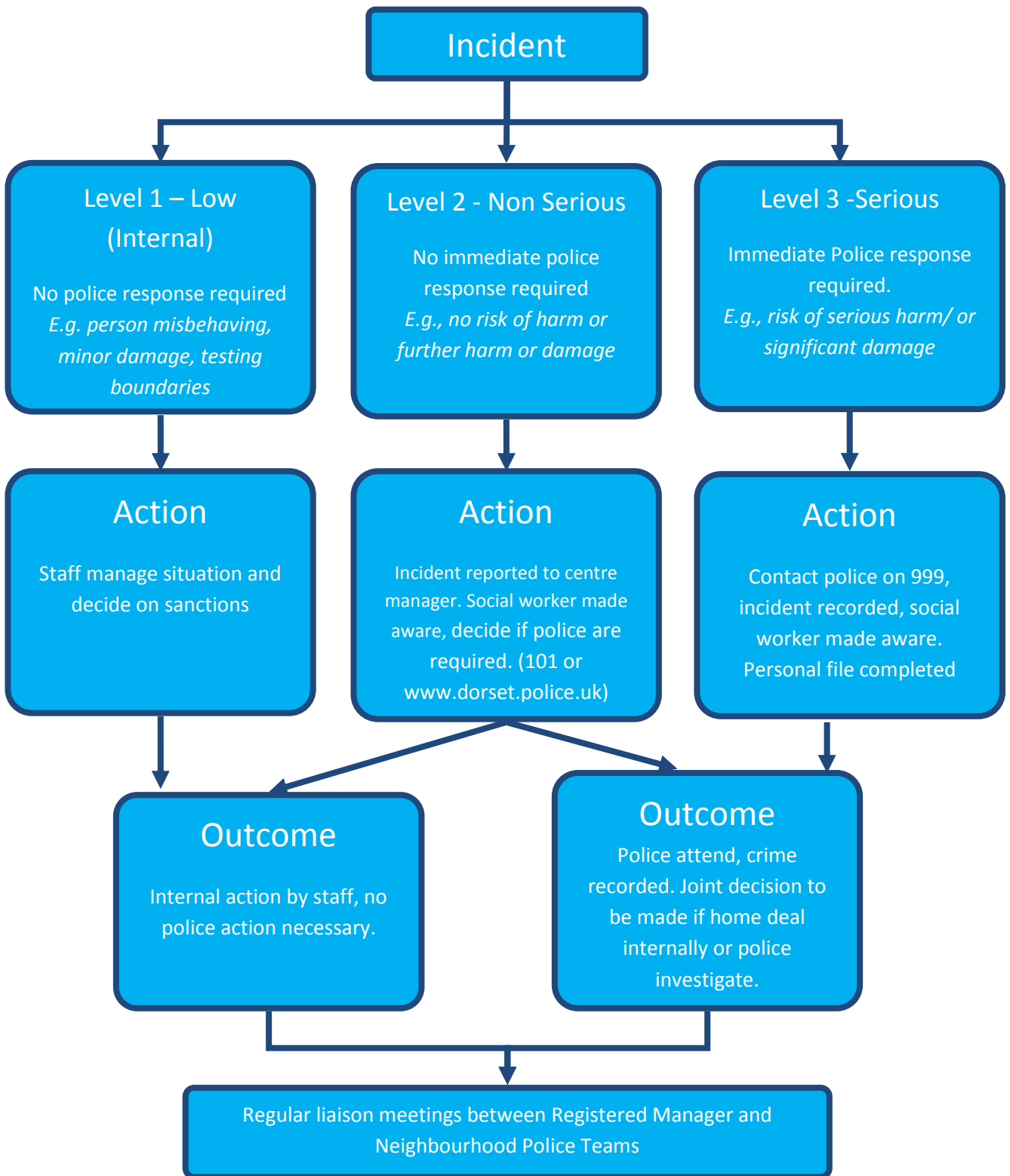
Borough of Poole

Dorset Combined Youth Offending Service

Her Majesty's Courts and Tribunal Service

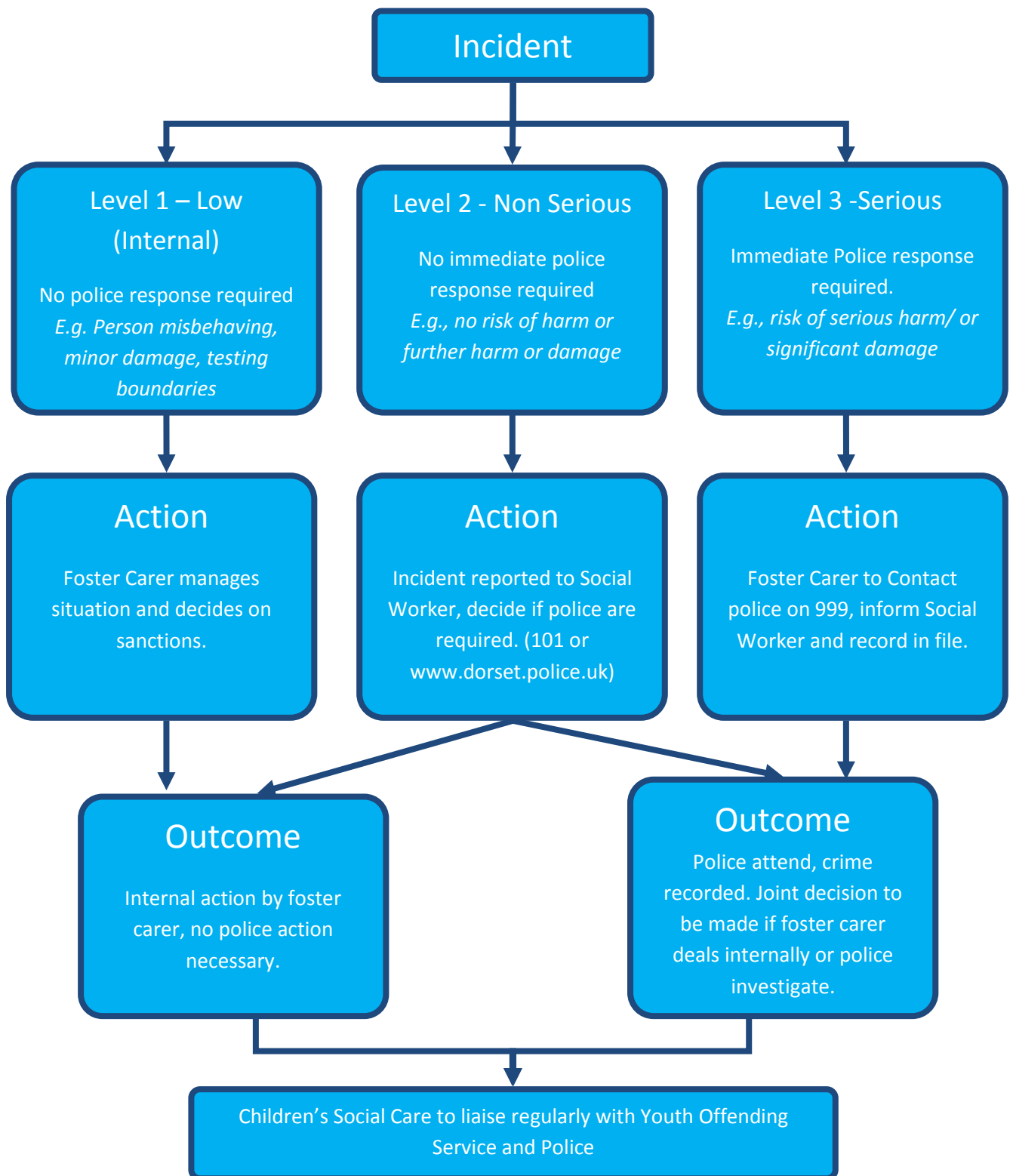
APPENDIX A: CHILDREN'S HOMES' DECISION TO INVOLVE POLICE

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.



END