



Llywodraeth Cymru  
Welsh Government

# All Wales Protocol

## Reducing the criminalisation of care experienced children and young adults

Expectations for practice across agencies to reduce the unnecessary criminalisation of care experienced children (up to the age of 18) and young adults (up to the age of 25)

## Introduction

1. The term 'child' here is used to refer to a person up to the age of 18 years old. The term 'young adults' is used here to refer to a person who is aged 18 to 25 years old.
2. We recognise that teenagers may not like being referred to as children and will prefer the term young person. The use of the term 'child' in this guidance does not mean that practitioners should use the term in practice with everyone under 18.
3. The protocol is aimed at a range of organisations including, local authority children's services, care providers (fostering services, children's homes and other provision), police forces, Youth Offending Teams (YOTs), Probation Services, the Crown Prosecution Service (CPS), HM Courts and Tribunal Service (HMCTS), local Youth Justice Judiciary, HM Prison and Probation Service and local health services including mental health. This is not an exhaustive list and all services that work with care experienced children, young people and young adults in some way, including the third sector have a role to play.
4. Where a child is looked after by the state, we have a responsibility to safeguard and promote their welfare and to act as good corporate parents so they can each reach their full potential. These responsibilities extend for some young people (who have been in care) up to their 25<sup>th</sup> Birthday.
5. Those carrying out functions under the Social Services and Well-being (Wales) Act 2014 also have a duty to pay due regard to the United Nations Convention on the Rights of The Child (UNCRC). Every child is entitled to rights under the UNCRC without discrimination. When children are in care the question we must ask is, '*Would this be good enough for my child?*'
6. Coming into contact with the criminal justice system is related to an increased likelihood of future offending and there is a shared duty of care to divert children and young people from the criminal justice system, wherever possible, including those who are care experienced.
7. The majority of children who enter care, do so due to abuse and neglect, and will experience Adverse Childhood Experiences (ACE's) and trauma; this has an impact on their emotional and behavioural development. This can result in behaviour that is perceived as challenging.
8. ACEs have been identified as a key risk factor for offending and victimisation, respectively.<sup>1</sup> Child Criminal Exploitation by nature involves children in offending behaviour. There is also a link between risk of Child Sexual Exploitation and involvement in the youth offending system, especially for boys.<sup>2</sup>

9. We have already made significant strides in reducing the criminalisation of children. Since December 2009, the number of first-time entrants to the youth justice system in England and Wales has dropped by 84%. This is a credit to all of the agencies and practitioners involved.
10. However, although the vast majority of children who are care experienced do not get involved with the justice system, on February 1<sup>st</sup> 2021 a snap shot of Welsh Youth Offending Team caseloads evidenced that 21% were in care or were care leavers.<sup>3</sup> This includes prevention activity to stop potential criminal behaviour. Data for 18 – 25year olds who are care experienced is not consistently available across Wales at this time.
11. The David Lammy MP and Charlie Taylor reviews<sup>4</sup>, highlight particular disadvantages faced by Black Asian and Minority Ethnic care experienced children, young people and young adults, who find themselves over-represented in both the care and criminal justice systems.
12. The Social Services and Well-being (Wales) Act 2014 and the Well-being of Future Generations (Wales) Act 2015 sets out requirements to ensure local services are provided to prevent children from offending and to promote their future welfare.
13. The Social Services and Well-being (Wales) Act 2014 also sets out requirements for the care and support of children in care and care leavers.<sup>5</sup> . The overall purpose of Part 6 of the Act is to safeguard and promote the well-being of children in care and accommodated and care leavers. . It also aims to promote resilience and achievement of personal well-being outcomes.
14. The Youth Justice Blueprint for Wales<sup>6</sup> sets out the Welsh Government and Ministry of Justice shared vision for youth justice in Wales. It takes a ‘children first’ approach to youth justice, to ensure that it is child-centred rather than service focused, ensure that it meets the individual needs of children and is trauma informed and responds to their best interests. Across Wales a national approach to diversion and early intervention has taken place through the Bureaus operating in most Youth Offending Team (YOT) areas.
15. The Welsh Government funds the ACEs Support Hub<sup>7</sup> that continues to play a central role in developing public services in Wales which are not only ‘ACE aware’ but also trauma informed, linking with the work of Traumatic Stress Wales.
16. Early Action Together is a programme designed to take a public health approach to policing vulnerability across Wales using an ACE lens and being trauma informed. The Early Action Together ACEs learning network provides helpful information for the public, practitioners and Police about the Early Action Together programme and its work in relation to Adverse Childhood Experiences (ACEs). The aim is to share useful information and research about ACEs as well as best practice and resources. [RSPH | Welcome to the Early Action Together ACEs learning network](#) This Early Action Together

ACEs learning network has been developed by Public Health Wales, all four police forces in Wales and key partner organisations across the UK.

17. Traumatic Stress Wales<sup>8</sup> is funded by Welsh Government and aims to improve the health and wellbeing of people of all ages living in Wales at risk of developing or with post-traumatic stress disorder (PTSD) or complex post-traumatic stress disorder (CPTSD). Traumatic Stress Wales is a national initiative that works through a network of easily accessible, locally based services centred around the people they are trying to help with streamlined care pathways to avoid unnecessary repeated referral and assessment. The initiative covers children, young people and adults, and is co-produced, co-owned and co-delivered by all relevant stakeholders, including people with lived experience of PTSD and CPTSD.
18. The Welsh Government Programme for Government 2021- 2026<sup>9</sup> sets out our ambitions for and commitments to work to support children, young people and people who face the greatest challenges. This includes specific commitments towards children looked after and care leavers.<sup>10</sup>
19. Taken together, existing and developing policy, arrangements to support practice and the commitments of the Programme for Wales provide a firm foundation of shared ambitions for child-centred, ACE aware, trauma informed practice that will support the aims and implementation of this Protocol.

## **Purpose of the protocol**

20. This protocol sets out best practice for avoiding the criminalisation of care experienced children (up to the age of 18) young adults (up to the age of 25) whenever possible.
21. This national protocol ('the protocol') is intended to promote practice across agencies, supported by local and regional arrangements, to help reduce the unnecessary criminalisation of care experienced children and young adults.
22. The Welsh Government considers that the protocol should assist those who come into contact with care experienced children and young adults while carrying out their work, in sharing a common framework of principles and expectations informed by an approach that actively promotes children's rights and human rights.
23. The protocol is a framework for good practice for those working with care experienced children up to the age of 18 and young adults up to the age of 25. It aims to avoid their prosecution wherever possible and appropriate, by encouraging a response to incidents which reduces the likelihood of criminalisation, offending or reoffending through promoting:
  - Practice that is ACE aware and trauma informed and is underpinned by an understanding of impact of childhood experiences on neuro-

development and presenting behaviour;

- Child-centred practice with a focus on what matters to the child ; listening to children’s views and taking their opinions into account in developing policy and in the way we practice;
- Practice that recognises in line with the [Wales Safeguarding Procedures](#) and [All Wales Practice Guides](#) that Child Criminal Exploitation (CCE) is a safeguarding issue. Children who are abused through CCE should be considered as children first and their care and support needs should be considered in the same way as for any child. Child Criminal Exploitation including County Lines can and does cause significant harm to children.
- Practice that is underpinned by an understanding of the interrelated nature of safeguarding issues such as going missing, Child Criminal Exploitation (CCE), Child Sexual Exploitation (CSE), Harmful Sexual Behaviour and trafficking. While at the same time understands the need for a consistent child-centred response based on individual needs in line with the [Wales Safeguarding Procedures](#) and [All Wales Practice Guides](#) and multi-agency statutory guidance<sup>11</sup>. All of which take a children first approach to prevent the criminalisation of children whenever possible.
- Practice that recognises that foster carers and residential placement carers are a key part of the team<sup>12</sup> in understanding the individual needs of children, the approach that a child or young person is most likely to be responsive to and in working with agencies to plan for the care and support of children and young people.
- Early intervention, diversionary practice and a restorative approach to create environments founded on relationships, respect, inclusivity, fairness and tolerance.

24. A strong corporate parenting ethos recognises the care system is not just about keeping children safe, but also about prevention, 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.

25. Unaccompanied asylum-seeking and migrant children who are care experienced are especially vulnerable should they go missing from their care placement. Not only are they at risk of being exploited and harmed, they are also often at heightened risk of being coerced into crime, including being radicalised. The United Nations Convention on the Rights of the child gives special protections which Wales has adopted. The Welsh Government has published advice on support for and the entitlements of unaccompanied asylum-seeking children, [Unaccompanied asylum seeking children: guidance](#)

[for professionals | GOV.WALES](#) and an [Unaccompanied asylum seeking children: age assessment toolkit | GOV.WALES](#)

26. Supervision, reflective practice and a consistent response to care experienced children and young adults across agencies should consider the question “*Would such behaviour lead to an arrest if they had been living with their family*”?

## **Implementation**

27. The Welsh Government expects agencies and relevant partnerships to consider the ways in which the approach set out in this protocol can best be implemented in a way that impacts on practice, prevents criminalisation whenever possible and has a positive impact on outcomes for care experienced children, young people and young adults so that they can enjoy good well-being and realise their rights.
28. The Welsh Government will work with partners to consider and agree action that can be taken at a national level to effectively support the implementation of this protocol.

## **1. Promoting rights and giving children and young people a voice**

29. In exercising their functions relating to children in care and accommodated, local authorities have overarching duties to have due regard to Part 1 of the United Nations Convention on the Rights of the Child as set out in section 7 of the Social Services and Wellbeing (Wales) Act 2014.
30. A person exercising any functions under Part 6<sup>13</sup> of the Social Services and Wellbeing (Wales) Act 2014 must have regard to the overarching duties set out in section 6 of the Act. This means that anybody exercising functions in relation to a child in care or accommodated, or in relation to those leaving or who have left care must:
- ascertain and have regard to the child or young person's views, wishes and feelings, so far as is reasonably practicable;
  - have regard to the importance of promoting and respecting the child or young person's dignity;
  - have regard to the characteristics, culture and beliefs of the child or young person (including, for example, language;)
  - have regard to the importance of providing appropriate support to enable the child or young person to participate in decisions that affect them (to the extent to which this is appropriate in the circumstances, particularly where the child or young person's ability to communicate is limited for any reason).
31. A child centred approach to policing aims to prevent any unnecessary criminalisation of children (persons under the age of 18) and prevent future offending, this includes giving children and young people a voice. The NCPP [National Strategy for Policing Children and Young People \(safe4me.co.uk\)](http://safe4me.co.uk) sets out that all children should be treated as children first in every encounter.<sup>14</sup>
32. The Children's Commissioner for Wales has produced a framework for working with children, grounded in the United Nations Convention on the Rights of the Child: [The Right Way - A Children's Rights Approach - Children's Commissioner for Wales \(childcomwales.org.uk\)](http://childcomwales.org.uk) and [A Children's Rights Approach for Social Care in Wales - Children's Commissioner for Wales \(childcomwales.org.uk\)](http://childcomwales.org.uk)
33. Listening to, learning from, and acting on children and young peoples' voice is vital for effective policies and practice. The Welsh Government expects partners to seek care experienced children and young adults' contribution to the implementation of local arrangements for delivering this protocol. This includes seeking their views on the planned development or commissioning of services to support the aims of this protocol on a local or regional basis.

34. Children are entitled to an active offer of advocacy<sup>15</sup> from a statutory Independent Professional Advocate (IPA) when they become looked after or become subject of child protection enquiries leading to an Initial Child Protection Conference. The 'active offer' is made directly to the child by the Advocacy Service. An 'active offer' is a sharing of information about the statutory right and entitlement of a child in particular circumstances to access support from an Independent Professional Advocacy Service. Information must be shared with them that includes an explanation about the role of Independent Professional Advocacy.
35. Guidance on Regulation 29 of *Statutory Guidance For service providers and responsible individuals on meeting service standard regulations for Care home services , Domiciliary support services, Secure accommodation services, and Residential family centre services*<sup>16</sup> sets out that as part of their induction, staff receive behavioural support training that is relevant to their role to make sure any control or restraint practices are only used proactively and when absolutely necessary, in line with current national guidance. Current national guidance sets out expectations for child/person-centred planning and positive behaviour approach to reduce the use of restrictive practices<sup>17</sup> in line with human rights. This approach will also contribute to a reduction in the incidents that can lead to the criminalisation of children and young people.
36. The regulation guidance also requires that service providers ensure a positive and constructive approach is adopted to support an individual's behaviour. Any strategies or measures taken to support the individual's behaviour are consistent with meeting the individual's needs for care and support; the well-being of other individuals for whom care and support is provided.
37. Guidance on Regulation 22 of *Statutory Guidance Fostering Services This statutory guidance relates to Parts 2 to 16 of The Regulated Fostering Services (Services Providers and Responsible Individuals) (Wales) Regulations 2019*,<sup>18</sup> contains similar advice. That service providers ensure arrangements are in place so that whenever foster parents are using forms of control or restrain:
- providers are able to check that it, is used as part of a pro-active approach to behavioural support:
  - is proportionate to the risk of harm and the seriousness of that harm to the child receiving care and support or another person
  - takes account of the assessment of the child's needs;
  - follows current legislation and guidance.

Current national guidance sets out expectations for child/person-centred planning and positive behaviour approach to reduce the use of restrictive practices<sup>19</sup> in line with human rights. This approach will also contribute to a reduction in the incidents that can lead to the criminalisation of children and young people.



38. The regulation guidance also requires Service providers ensure a positive and constructive approach is adopted by foster parents to support a child's behaviour. Any approach to support the child's behaviour is consistent with meeting the child's needs for care and support and the wellbeing of other members of the foster parent's household who may be affected by the placement made.

## **2. What this means for practice**

39. Many care experienced children, young people and young adults will have experienced trauma and/or abuse before coming into care. Those young people abused through harm such as child sexual exploitation (CSE) or child criminal exploitation (CCE) experience the added trauma of emotional, psychological, physical and/or sexual abuse. They will have experienced multiple abuses and breaches of trust.

40. These experiences can impact on the ways in which children and young people act and engage with others. The fact that children may be perceived as uncooperative, aggressive, and unwilling to engage<sup>20</sup> and as 'risk taking' can mean that they are, misunderstood and negatively perceived by practitioners. Engaging in behaviors seen by adults as 'risky' can often be understood by children as a way to cope and assert some control.<sup>21</sup> Children participating in a Welsh Government commissioned consultation<sup>22</sup> talked about practitioners sometimes judging them, blaming them or 'branding' them.

41. The ways in which we respond to care experienced children and young adults needs to be informed by an understanding of the full context of their life. Getting to a position of trust with a child who has been shaped by a history of being let down or hurt by adults' demands and deserves the time to develop a relationship with the child.

42. Welsh Government legislation and policy seeks to promote a rights-based approach to practice with children and adults. This means involving them in decisions about the support and services they receive and the outcomes they want to achieve. It also means planning to meet needs in a child and person centred way that promotes wellbeing and the opportunities for individuals to realise their rights.

43. One of the implications of this for practice is the need to plan with, and for, children and adults so that measures are in place to prevent situations arising where they behave in way that people find challenging and that escalate into situations where property is damaged or there is a risk of harm to the individual or others. Information from significant people in the individual's life can help to inform care and support planning to achieve this.

44. Listening to children and young people and finding out what matters to them should be part of a child-centred planning to help make them feel secure and reduce the likelihood of them going missing and/or being put at risk of abuse and exploitation.
45. The approach to involving children and the significant people in their lives in planning for care and support should be meaningful and appropriate to the age, capacity and communication needs of the individual. This means providing additional support for some children through an advocate<sup>23</sup> to ensure that their views are heard. Part of a discussion with a child about their care and support plan should include sharing with them information about the intentions set out in this All Wales Protocol and the commitment to avoid criminalisation whenever possible.
46. There is evidence that an over-reliance on specialist risk assessment tools does not always support child-centred practice and may detract from professional judgement.<sup>24</sup> Where used, risk assessment tools should only inform a wider assessment of care and support needs. The process should not result in meetings where the focus is on the risk assessment and reducing a risk score without considering wider care and support planning to sustain change and support well-being in a child centred way.
47. Restrictive practices such as restraint or seclusion should only ever be used as a last resort to prevent harm to the individual or others, in line with expectations set out in the [Reducing restrictive practices framework 2021 | GOV.WALES](#). The advice on child and person centred planning and positive behaviour approaches set out in the Framework will support practice which will also reduce the likelihood of incidents occurring which could lead to the child or young person coming into contact with the police.
48. Wherever possible if an incident occurs, children should be given time to calm down, if they are not calm, to talk in the presence of a known and trusted practitioner or in private if they prefer, when they share their account of what has happened. The child should be given the choice about who is present when they give their account of the incident, wherever this is practical and possible. This can be an important 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 wherever possible.
49. Seeking children's views after an incident, including where they have come into contact with criminal justice agencies, is an important part of reviewing decisions about their care and support in order to reduce the likelihood of future incidents. This discussion should wherever possible take place without the presence of others involved in the incident.
50. Proactive strategies can include environmental changes, to make the environment more suitable for the child or young person and teaching new skills or behaviours, so that behaviours that challenge become less likely.

51. Reactive strategies might include distraction, de-escalation, active listening, or withdrawal. These strategies can form a useful part of the proactive approach to inform care and support planning to reduce the likelihood of incidents that may lead to the police being called or to children and young people going missing where they will be at risk.
52. Consultation with children and young people<sup>25</sup> who are care experienced identified that the police should be regular visitors to placements – not just attending when something has gone wrong, but there to build relationships with them and to understand each other better.

[Check Your Thinking – Resources to support safeguarding practice with young people, for use by all those working with and caring for young people.](#)

**Resources and materials have been developed from research and partnership work with children young people, foster carers, and social care and allied professionals.** They are designed for use by all those working with and caring for young people. They share messages from young people with experiences of exploitation and harm, about how they experience support. The messages are also from those working with and caring for children and young people, about support needed and some of the challenges involved in keeping them safe. All the resources are designed as reflective tools to help you 'check your thinking' about key issues in safeguarding children and young people from exploitation, harms and other abuses, such as: assessing and managing risk, responding to children and young people, multi-agency practice, the importance of language and child-centred approaches.

### **3. Responding to incidents**

53. Sometimes incidents occur because practitioners put in places rules and sanctions with the intention of keeping children safe and managing risks. Children may react to the enforcement of these rules and sanctions in a way that escalates situations so that their behaviour challenges others or where a response to 'risky' behaviour results in a call to the police.
54. When responding to an incident every practitioner should ensure that they ask the child for their own account of what has happened. There may be a situation where immediate action is necessary to ensure the safety of the child or others.
55. As part of all children's care and support plans there should be rigorous assessments and plans in place to respond to individual children's behaviour. Effective de-escalation requires practitioners to make rapid and structured assessments of the immediate and foreseeable risks, considering care planning, risk assessment and positive behaviour support planning for the individual child.
56. When incidents arise at the place where the child lives, carers should attempt to manage them in a way informed by information in the individual's care and support plan, through application of the positive behaviour policy and through internal resolutions such as restorative approaches, without police involvement wherever possible and appropriate.
57. Carers need to consider the nature and seriousness of the incident before deciding how to respond and whether to involve the police. This should be in line with positive behaviour policies within the setting. Positive behaviour policies should include a cooling off period allowing all parties time to reflect, unless the incident is so serious that more immediate action is required.
58. The police should not be used for behaviour management or matters a reasonable parent would not have called the police over. Consideration should always be given to whether the police would be called if the incident had occurred in a domestic setting. Positive behavioural support policies and training for carers and staff on how to apply them will contribute to a reduction in incidents where children behave in a way that challenges others.
59. Responding to an immediate offence/situation should involve efforts to understand the full circumstances of the incident and to identify whether the child or young person may be a victim. Efforts to gain a full understanding of the situation should wherever possible be undertaken in a place where the child or young adult feels safe and supported.<sup>26</sup>

60. There is an expectation that local authority officers, residential care workers or foster parents plan with and for care experienced children and young people in a child-centred way that meets their needs and minimises the risk of incidents arising. When incidents do arise, carers should strive to manage them at the placement through internal resolutions such as restorative approaches.
61. Where this is not possible due to the severity of the situation, or where there is concern about immediate safety, police should consider use of discretionary powers to apply an informal resolution response (such as a community resolution). It is good practice for such procedures to include a cooling-off period and sufficient time for decisions to be informed by the advice of key professionals (e.g. registered manager and key worker, foster parents, social worker or police link workers for residential settings).
62. Understanding the potential for a child to have their details retained on police databases, which remain searchable and potentially may be disclosed into adulthood, should allow those caring for children and to make an informed judgement about involving the police. It is important for all agencies and those caring for children to be clear about how they will decide to respond to an incident and whether any other alternatives should be considered e.g. a restorative meeting.

#### **4. Care experienced young adults (aged 18 or over)**

63. [Part 6 Code of Practice \(Looked after and accommodated children\) \(gov.wales\)](http://gov.wales) under the Social Services and Well-being (Wales) sets out Support for children aged 16-17 who are still being looked after (a 'category 1 young person'). This describes a comprehensive framework of assessment, care and support planning, intervention and case review by local authorities to prepare 16 and 17 year olds for the time when they will no longer be looked after.
64. When a child in care is about to turn 16, the local authority must prepare a pathway plan. This plan will capture the actions required from the local authority, the child's carer, the child, birth family and other identified parties to assist the child to make a successful transition from care into adulthood. The pathway plan will build upon the child's existing Part 6 Care and Support Plan, which will be subsumed within the pathway plan.
65. The Part 6 Code of Practice also sets out duties on local authorities to provide support for those children and young adults who have ceased to be looked after. These include care leavers under the age of 18 (referred to in the Act as a 'category 2 young person'), care leavers aged 18 and over (a 'category 3 young person'), and care leavers who reconnect to care at 21 for education and training (a 'category 4 young person'). It also deals with young people who left care under a Special Guardianship Order (a 'category 5 young person'), and other former looked after or accommodated children who may be entitled to advice and support (a 'category 6 young person').
66. The Part 6 code sets out a local authority's legal responsibilities in respect of post-18 living arrangements for young adults in foster care. Local authorities are required to set up local 'When I am Ready' schemes in line with the requirements in the code. 'When I am Ready'<sup>27</sup> arrangement is the term used in Wales for an arrangement whereby a young adult in foster care remains with their former foster carer beyond the age of 18.
67. However, many young adults who are care experienced still have to make accelerated transitions into independence. Many young adults also have to negotiate adulthood while coping with the continued impact of adverse childhood experiences and trauma. This will be different for every individual but there is clear evidence that for some, these childhood experiences can present additional challenges to enjoying well-being into adulthood.<sup>28</sup>
68. That is why legislation and the Code of Practice set out duties on local authorities to plan with them for when they leave care and to provide support as they grow into young adults. Once a child ceases to be looked after, if they are a "relevant child", or a "former relevant child", the local authority must appoint a Personal Advisor (PA) to support them up to the age of 21, and up to 25 if requested. They act as the focal point to ensure

that care leavers are provided with the right kind of personal support.

69. Services provided by Local Authorities for young adults who are care experienced should develop and maintain constructive working relationships with local criminal justice services to help personal advisers and other partners, make the right links to support these young adults, including the use of pathway planning to divert them from offending, support them if they are transferring from YOT to Probation Service supervision, support them if in custody, or supervise and assist them in the community on release from custody as part of their resettlement plan.

## **5. Police decision-making when responding to incidents involving care experienced children, young people and young adults**

70. Where it is not possible to avoid involving the police due to the severity of the situation, or where there is concern about immediate safety, police should consider use of discretionary powers to apply an informal resolution response (such as community resolution).
71. Where the police are required to record an incident as a crime but feel further action (other than safeguarding) is not in the public interest, they have the discretion to resolve the report accordingly by applying Outcome 21 from the National Police Outcomes Framework. Outcome 21 is set out as: *Further action, resulting from the crime report, which could provide evidence sufficient to support formal action being taken against the suspect is not in the public interest - Police decision*. This will therefore, not be recorded as a police sanction on the Police National computer (PNC).
72. Children (under the age of 18) should not be taken to police stations on matters that allow for an alternative approach. However, in cases where this is judged to be absolutely necessary, they should be adequately supported by their responsible local authority or care setting.
73. Police, social workers, and carers should also consider what will happen when the child is discharged from the station. The options at this time are; being released without charge / no further action; charged with an offence; released under investigation; bailed or referred to the relevant Youth Offending Team for consideration by a diversion panel.
74. There is an expectation that where a care experienced child or young adult comes into contact with the criminal justice system, their responsible local authority is contacted and has input in decision-making.
75. In circumstances where a community resolution is inappropriate, the police will refer the case to the local Youth Offending Team (10 to 17 year olds) who through multi agency decision making with the police will agree the most suitable course of action, including diversion from criminalisation/prosecution.
76. Multi agency diversion panels are designed to consider and provide informed decision-making, based on an assessment by the YOT of the child's needs to determine the most suitable outcome. The process has regard to the best interests of both children and victims of crime, with a view to protecting potentially vulnerable children and protecting the public.
77. The decision making should consider what the most appropriate disposal is for the child, what help and support they need and depending on the



type of disposal whether a restorative intervention, would be appropriate. It should take into account of the wishes of those harmed as well as seeking to address the needs of the child to reduce the risk of repeat offending.

## **6. Supporting care experienced children and young adults in the criminal justice system and reducing offending**

78. There will be instances where children and young adults who are care experienced will be charged with an offence. The home authority must ensure that the child or young person is legally represented by a solicitor with expertise in youth justice and supported whilst at the police station by an Appropriate Adult, ideally by an adult who knows them well. This should include measures to ensure that the child or young person understands what is happening to them.
79. All agencies should ensure that care experienced young adults who come in to contact with the criminal justice system are aware of their rights to legal representation and/or advocacy support.
80. Local authorities should explain to children in care and care leavers what they should do and say if they come into contact with the police or criminal justice agencies. This will allow support services, including their Personal Advisor, to be notified and involved in decision-making and case resolution.
81. Where they consent to their notification, police and criminal justice agencies should seek and encourage the involvement of the care leaver's former responsible authority and / or their support network in decision-making. This is regardless of whether their contact with police occurs inside or outside that authority.
82. All agencies should ensure that care experienced young adults who come in to contact with the criminal justice system are aware of their rights to legal representation and/or advocacy support.
83. Children should not be held at the police station for longer than is necessary because support and/or accommodation isn't available.
84. All local agencies/protocol partners should sign up, and adhere, to the *All-Wales guidance for the appropriate management and transfer of children and young people by the Police and Local Authorities Under the Police and Criminal Evidence Act 1984<sup>29</sup>* and seek to avoid holding care experienced children and young people overnight in police cells wherever possible.
85. It is important that they are not disadvantaged because of their care/former care status, when the decision is made about whether to grant bail or not. Consideration is also likely to be given to whether they can return to their place of residence depending on the nature of offence committed.

86. If the police are proposing to deny bail, every effort should be made to identify whether bail supervision and support could be provided to prevent this occurring and to find alternative accommodation if it is required. The Police have a duty to make the request to the local authority and the local authority to consider it.
87. Where the child, young person or young adult does not admit to an offence, or where the offence is serious enough to merit considering prosecution, individual circumstances and those of the offence should be carefully considered when deciding if charging and prosecution is appropriate.<sup>21</sup>.
88. Although only applying to offences committed in children's homes, the [Crown Prosecution Service Guidance on Youth Offenders](#) section on Behaviour in Children's Homes provides a useful way of looking at aggravating and mitigating factors when deciding whether prosecution of care experienced children is appropriate regardless of the child's type of placement.
89. Any decision to charge and prosecute a child or young adult should consider whether their actions are due to exploitation, human trafficking or modern slavery. If they are a victim of trafficking or modern slavery, the non-prosecution principle within the Modern Slavery Act 2015 should be considered and, if appropriate, applied. Furthermore, the local authority should be pro-active in assisting the Crown Prosecution Service in reaching informed decisions when considering cases involving care experienced children.
90. If a care experienced child or young adult receives a community sentence, their carers, social worker or personal advisor, YOT or probation case manager, should continue to work closely together, share information and clarify their roles and responsibilities to ensure that the child, young person or young adult receives the support they need.
91. If a custodial sentence is likely, the carers, YOT worker, probation officer, social worker or personal advisor should work together to prepare the child, young person or young adult, explaining what will happen and how they will be supported. The YOT worker or probation officer should request any relevant information from the social/worker/personal advisor ahead of them preparing the pre-sentence report.
92. [Guidance for the joint working arrangements between Youth Offending Teams and Local Authority Children's Services for children in custody in Wales \(November 2020\) - Youth Justice Resource Hub \(yiresourcehub.uk\)](#) is intended to ensure that staff in YOTs and children's services work together effectively in the discharge of their specific duties towards children and young people to meet their needs and to support their reintegration and resettlement.

93. It is especially important to ensure young adults who are transitioning between YOT and probation services do not fall through the gaps. The responsibilities of agencies are outlined in the [Youth to adult transition principles and guidance for Wales - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/youth-to-adult-transition-principles-and-guidance-for-wales)
94. A Framework to support positive change for those at risk of offending in Wales 2018-2023<sup>30</sup> sets out how Prison and Probation services will, in collaboration with all relevant agencies, to further reduce the number of people entering the criminal justice system and support people who have committed offences not to re-offend. The framework includes advice in relation to supporting care leavers.
95. Across Wales 18+ diversionary schemes, commissioned by the Police and Crime Commissioners (PCC) in conjunction with Welsh Government and HMPPS are now in operation. Any adults that meet the criteria are automatically referred to the scheme upon admission of guilt.

### **Part 11 of the Social Services and Wellbeing (Wales) Act 2014**

96. The [Part 11, Code of Practice \(miscellaneous and general\) | GOV.WALES](https://www.gov.wales/government/publications/part-11-code-of-practice-miscellaneous-and-general) under the Social Services and Well-being (Wales) Act 2014 sets out the duties placed on local authorities in respect of adults with care and support needs who are in the secure estate in Wales. This duty exists regardless of their place of ordinary residence in Wales or elsewhere before their detention, and a change in how existing responsibilities for the care and support of children in the secure estate (whether detained in England or Wales) are fulfilled.
97. The home local authority must fulfil their duties towards a child looked after during their period of detention in accordance with the requirements of Care Planning, Placement and Review of Cases (Wales) Regulations 2015 and to former looked after children on their release.
98. Local authorities must continue to fulfil their duties in relation to sections 105 – 108 of the 2014 Act (keeping in touch, personal advisers, pathway assessment and plans, pathway assessments and plans post 18 living arrangements) and these continue to apply to category 2 and to relevant category 5 and 6 young people during the period that they are detained.
99. The local authority must meet its responsibilities for adult care leavers in the secure estate, at the appropriate time. The local authority's responsibilities to care leavers are suspended where the local authority has no ability to fulfil these responsibilities during the time the child is detained but are triggered again when the individual is released. Section 185(5) excludes some of the support for care leavers aged 18 years and over that they would otherwise have been entitled to receive while they are detained in the secure estate.

100. Adult care leavers aged 18 years and over (category 3); care leavers who reconnect at 21 with education and training (category 4), young people who left care under a Special Guardianship Order (category 5), and other former looked after children who may be entitled to advice and support (category 6) are not entitled to receive some of the support which they would otherwise be entitled to receive in accordance with Part 6 of the 2014 Act during the time they are detained in the secure estate. Entitlements within sections 110,112,114 and 115 of the 2014 Act are disapplied during the period of detention.
101. Custodial establishments should nominate a named representative to act as the link with the care planning process for each child in care during their time in custody.
102. Custodial establishments should do all they can to prepare children and young people for transition back into the community and support transition arrangements. Resettlement planning should begin at the start of the remand period or sentence and be a continued focus of required planning meetings during the time in custody. Resettlement planning should include the individual's wishes and views, and arrangements tailored to their individual needs.
103. Children, young people and young adults who are care experienced should not be disadvantaged regarding early release compared with other children in custody. Early release and use of release on temporary license can encourage good behaviour and engagement with resettlement plans and, as such, should be considered where possible.

**Restorative justice** gives victims the chance to meet or communicate with the child or young person to explain the real impact of the crime (if it is appropriate) – it empowers victims by giving them a voice. It can help children and young people to learn from their mistakes and help them to take responsibility and make amends. There are various forms of direct and indirect reparation.

A restorative approach is essentially about working with individuals who have offended to help them understand their own needs and to empathise with and, therefore, understand the needs of others, allowing them to develop understanding of the impact of their actions. This can range from informal day-to-day restorative approaches related to building relationships through to more formal restorative justice conferences.

Restorative approaches seek to establish an environment where mutual regard is foremost, and to repair or resolve a harm that has been perpetrated. It is a process whereby the victim has an opportunity to be heard and to state the impact of the behaviour and the individual who has offended has the opportunity to take responsibility for their actions. Restorative approaches need to be informed by the following six principles:

**Restoration** – the primary aim of restorative practice is to address and repair harm.

**Voluntarism** – participation in restorative processes is voluntary and based on informed choice.

**Neutrality** – restorative processes are fair and unbiased towards participants.

**Safety** – processes and practice aim to ensure the safety of all participants and create a safe space for the expression of feelings and views about harm that has been caused.

**Accessibility** – restorative processes are non-discriminatory and available to all those affected by conflict and harm.

**Respect** – restorative processes are respectful of the dignity of all participants and those affected by the harm caused.

To avoid causing additional harm, professionals should consider the impact of restorative processes on the child or young person, bearing in mind their individual characteristics such as religion, culture or individual vulnerabilities and experiences. The child or young person should be given an opportunity to have their voice heard. It should not be automatically assumed that a child or young person is solely to blame for an event and they should be afforded an opportunity to put their version of events across

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<sup>1</sup> Baglivio, M; Wolf, K; Piquero, A. and Epps, N. (2015) 'The Relationship between Adverse Childhood Experiences (ACE) and Juvenile Offending Trajectories in a Juvenile Offender Sample', *Journal of Criminal Justice Volume 43*, Issue 3, May–June 2015, Pages 229-241

<sup>2</sup> Cockbain, E; Brayley, H; Ashby, M (2014) *Not just a girl thing: A large-scale comparison of male and female users of child sexual exploitation services in the UK*. Barnardo's, London.

<sup>3</sup> Snap shot data from all Youth Justice Services across Wales on 1<sup>st</sup> Feb 2021.

<sup>4</sup> [Lammy Review - GOV.UK \(www.gov.uk\)](http://www.gov.uk) [Review of the youth justice system - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>5</sup> [Children in local authority care: code of practice | GOV.WALES](http://gov.wales)

<sup>6</sup> [youth-justice-blueprint 0.pdf \(gov.wales\)](http://gov.wales) [Supporting young people in the Justice system | GOV.WALES](http://gov.wales)

<sup>7</sup> [about – Ace Aware Wales](http://aceaware.wales)

<sup>8</sup> [Home -Traumatic Stress Wales \(nhs.wales\)](http://nhs.wales)

<sup>9</sup> [Programme for government: update | GOV.WALES](http://gov.wales)

<sup>10</sup> See Pages 4 and 10 of the Programme for Government.

<sup>11</sup> [Safeguarding children at risk of abuse or neglect | GOV.WALES](http://gov.wales)  
[Safeguarding children from child sexual exploitation | GOV.WALES](http://gov.wales)  
[Safeguarding adults at risk of abuse or neglect | GOV.WALES](http://gov.wales)

<sup>12</sup> [Fostering Wellbeing | The Fostering Network](http://thefosteringnetwork.org)

<sup>13</sup> [Children in local authority care: code of practice | GOV.WALES](http://gov.wales)

<sup>14</sup> [CYP Chart 2018 v5 \(safe4me.co.uk\)](http://safe4me.co.uk)

<sup>15</sup> The National Approach to Statutory Advocacy (NASA), is a standardised approach to statutory advocacy services being delivered by the six Regional Social Services Collaboratives. These arrangements are set out in the [Code of Practice on Advocacy \(Part 10\)](#) under the Social services and Well-being (Wales) Act 2014.

<sup>16</sup> [Statutory Guidance for service providers \(gov.wales\)](http://gov.wales)

<sup>17</sup> [Reducing restrictive practices framework 2021 | GOV.WALES](http://gov.wales)

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<sup>18</sup> [Statutory Guidance - Fostering Services \(gov.wales\)](#)

<sup>19</sup> [Reducing restrictive practices framework 2021 | GOV.WALES](#)

<sup>20</sup> Sharp-Jeffs, N; Coy, M; and Kelly, L. ,2017, *Key messages from research on child sexual exploitation: Social Workers* , Centre for Expertise on child sexual abuse, London Metropolitan University

<sup>21</sup> Hallett, S. (PI), Forrester, D., and Verbruggen, J. ,2016-18, *Keeping safe? An analysis of the outcomes of work with sexually exploited young people in Wales*. Health and Care Research Wales.

<sup>22</sup> Dynamix, (2018) *How do we measure children by what they think, and not by what their experiences are?* Welsh Government commissioned safeguarding consultation with young people.

<sup>23</sup> Advocacy can take many forms, each with the common aim of supporting individuals to have their voices heard, to clarify options and to express their views, wishes and feelings. See Annex 3.

<sup>24</sup> <https://www.csacentre.org.uk/resources/blog/risk-tools-risk-talk-and-relationships/>  
<https://www.csacentre.org.uk/our-research/responding-to-csa/risk-tools/>

<sup>25</sup> Consultation with children and young people, February 2021 undertaken by the 4C's.

<sup>26</sup> Sharp-Jeff, N; Coy, M. and Kelly, L. (2017) *Key messages from research on child sexual exploitation: Police*, Centre for Expertise on Child Sexual Abuse

<sup>27</sup> [when-i-am-ready-good-practice-guide-march-2016.pdf \(gov.wales\)](#)

<sup>28</sup> [Adverse Childhood Experiences - Public Health Wales \(nhs.wales\)](#)

<sup>29</sup> [The management and transfer of children and young people in police custody | GOV.WALES](#)

<sup>30</sup> [Framework to support positive change for those at risk of offending in Wales 2018-2023 \(iomcymru.org.uk\)](#)