

PRINCIPLES AND PRACTICE FOR THE SAFEGUARDING AND TRANSFER OF CHILDREN & YOUNG PEOPLE FROM POLICE CUSTODY TO LOCAL AUTHORITY ACCOMMODATION & SUITABLE ACCOMMODATION WHERE BAIL IS DENIED.

This protocol applies to children and young people from the age of 10 up to the age of 18, who are arrested, charged and subsequently denied bail; the police will seek "suitable" accommodation from Children's Social Care for the period subsequent to the arrest and detention at a police station but prior to appearance in court.

In relation to requests for "secure" accommodation, all children under 12 years of age must be bailed unless the agreement has been obtained from the Home Secretary.

http://nottinghamshirechildcare.proceduresonline.com/chapters/p_place_sec_accom.html

The fundamental principle underpinning this protocol is that whenever possible a young person should be bailed rather than remain overnight in a police station. Children under 12 years old or without age appropriate competence or with special needs must always be bailed, or a transfer agreed to local authority accommodation.

1. Background

It is well documented that children and young people who are held in police custody may be vulnerable, for a variety of reasons, particularly those least able to represent their own best interests, control their behaviour and communicate their needs.

The report of Her Majesty's Inspectorate of Prisons (HMIP) "Who's Looking Out for the Children"¹ identified a number of significant safeguarding concerns relating to the experiences of children whilst in police custody. A key concern identified in the report is the overnight detention of children and young people in police cells after police bail is denied, as opposed to transfer to local authority accommodation.

HMIP reiterated that Section 11 of the Children Act 2004, which "places a duty on key people and bodies to make arrangements to ensure their functions are discharged with regard to the need to safeguard and promote the welfare of children", applies equally to the police as it does to health, local authority and youth offending agencies.

In conclusion, the HMIP report stated that; "the children and young people who are processed through police custody are potentially the most vulnerable of the vulnerable" (HMIP 2011:21).

2. Purpose of the Protocol

The aim of this protocol is:

- To clarify the duties and responsibilities of the police, children's social care and youth offending team when the police are requesting "suitable accommodation".
- To clarify the duties and responsibilities of those same agencies in respect of requests for "secure" accommodation (including Clayfields secure children's home).

¹ HMIP (2011): *Who's looking out for the children? A joint inspection of Appropriate Adult provision and children in detention after charge.* Available from: <https://www.justiceinspectorates.gov.uk/hmic/media/whos-looking-out-for-the-children-20111215.pdf>

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- To ensure that relevant agencies work together to safeguard the well being of children and young people and avoid their detention overnight in police cells whenever possible.
- To ensure that, where detention to a police cell is unavoidable, children and young people should only be detained for as short a period as possible.

This document sits alongside the "Joint protocol for the safeguarding and transfer of children and young people from police custody to local authority accommodation and secure accommodation", which is designed primarily around requests for secure accommodation.

3. Legal Framework.

Under the Bail Act 1976, there is a general presumption that bail will be granted without conditions but there are exceptions that apply to children and young people.

Section 38 of the Police and Criminal Evidence Act (1984) (PACE) stipulates that, where the police charge a child or young person with an offence, the custody officer must decide whether to grant or deny bail. PACE specifies that a person may be refused bail and continue to be detained following charge if the custody officer believes the person would:

- Fail to appear in court.
- Commit further offences.

Or it is necessary:

- For their own protection.
- To prevent harm to others.
- To prevent interference with justice/investigation.
- There is doubt about their identity/name & address.

Additionally, bail may be denied if the custody officer believes that the child/young person ought to be detained in his or her own interests.

Under section 38 (6) of Police and Criminal Evidence Act (PACE) 1984 a child or young person who is likely to be detained overnight **must** be transferred to local authority accommodation (known as a PACE transfer). It is important to recognise that there are two types of accommodation, which are referred to, namely "suitable" and "secure".

Under section 38 (6) PACE where a custody officer authorises an arrested juvenile to be kept in police detention, the custody officer shall secure that the arrested juvenile is moved to local authority accommodation, unless he certifies:

- (a) That, by reason of such circumstances as are specified in the certificate, it is impracticable for him to do so: or
- (b) In the case of an arrested juvenile who has attained the age of 12 years, that no "secure" accommodation is available and that keeping him in other local authority accommodation would not be adequate to protect the public from serious harm from him.

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Under section 21 (2) (b) of the Children Act 1989 the local authority is required to provide accommodation for children following Section 38(6) request. The Local Authority is required by The Children Act to provide accommodation for children whom they are requested to receive under the section 38(6).

4. Principles and practice

Whenever possible, charged children will be released on bail. In the event of the police requesting a "suitable" accommodation from the local authorities, their starting point should be to confirm the reasons for the refusal of bail and understand the efforts made to secure alternative accommodation to local authority care. In some cases, however the prospect of releasing a child/young person on bail may raise concerns. (<http://www.legislation.gov.uk/ukpga/1984/60/section/38>)

It is the Local Authority who will decide the type of accommodation, which is required, where that accommodation is, and take responsibility for the child and produce them at Court.

4.1. Secure accommodation will be requested only when necessary.

The PACE Act is very clear about the criteria required for the police to justify the request of "secure" accommodation; that the child poses a risk of serious harm by virtue of being likely to cause death or serious injury (whether physical or psychological) to members of the public.

- The child must be 12 years or older.
- The custody officer must believe that this child poses a risk of serious harm to the public between being charged and appearing at court.

The local authority can expect the following to be provided by the police in all circumstances:

- Child/young person's personal information, including details of vulnerabilities.
- Nature of offence.
- Explanation as to why the child/young person poses a risk to the public.
- Risk assessment undertaken by the police and all such other relevant information necessary for a correct determinations as to the suitability as to the nature of accommodation to be provided must be before the Custody Officer makes a determination under Section 38 Pace.

When "secure" accommodation is requested, there is not an absolute duty on local authorities to accommodate every child. There is, however, a duty to have in place a reasonable system to enable local authorities to respond to section 38(6) requests for "secure" accommodation. In the circumstances where secure accommodation is not available, the local authority will need to confirm this with the police and the police will detain the young person in custody, recording rationale on the custody record with the name of the member of the local authority they have spoken to and the reasons why the young person will remain in police detention.

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4.2. Local authorities will always accept requests for suitable accommodation.

Local authorities will always accept police requests for “suitable” accommodation. When suitable, i.e. “non-secure” accommodation is requested the local authority have an absolute duty to provide it. When the local authority receives a request for “non-secure” accommodation the local authority can decide where to place the child and whether it is a “secure” or “non-secure” bed. The local authority will determine the type of suitable accommodation that would be most appropriate to the situation and the child/young person’s needs:

- The child/young person to be returned to family or friends unless there are safeguarding concerns.
- Foster/Residential Care.

The guidance below relates to requests for “suitable accommodation”. The following is guidance taken from www.gov.uk and the Youth Justice Board.

- If it is necessary to detain the child or young person overnight, they must be transferred to local authority accommodation and the responsibility for their care transfers to the local authority. Transfers cannot be used for young people detained for breach of bail or under a warrant.
- The custody officer will liaise with the local authority to arrange accommodation.
- The police and the local authority must assist each other with the process of identifying a placement and contribute information on risk and vulnerability.
- Transfers must take place unless extreme circumstances such as severe weather conditions make it physically impossible to do so.
- Transfers may not be refused because of difficulties finding a placement, or concerns about behaviour or the offence.
- If a transfer is agreed, there should be a local agreement on how the child or young person is physically transferred to the accommodation. This responsibility may fall to the police, YOT or local authority, depending on local arrangements. This can be negotiated between the police and Emergency Duty Team (EDT).
- It is important that the transfer of children and young people takes into account the health and safety of staff safety, the wellbeing of the child or young person, and others risk management issues.
- There should be a clear handover to YJB placement staff, which includes providing relevant personal information together with assessments of risk of harm to themselves or from others, or risk of serious harm to others in relation to arrangements for transporting the child or young person to court.

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4.3. Power to Detain

In handing over the child/young person to the local authority staff, the police also transfers the power to detain the child/young person lawfully. At the point of transfer, the Police Custody Officer's responsibility ceases entirely. The local authority become the custodian, with the same legal responsibility towards the child/young person as the Police Custody Officer has for the child/young person in the cell.

It is the duty of the local authority to transport the child to Court. The child/young person will be informed of this fact when taken from police custody to local authority accommodation as per the below paragraph.

In the presence of local authority staff, the police must inform the child of the following:

You have been charged with [offence] and you have to appear at court on [date]. You have been refused bail, which means that you have to stay in custody until your court date. If you were an adult, you would stay in the police cells until then, but because you are under 18 years of age, the local authority is going to look after you until your court appearance. The local authority will decide where you will stay until then. It is very important that you understand that you are still in custody: this means that you must stay where you are told to go by the local authority and can only go out with their permission. If you do leave without permission, the local authority will tell the police and you will get into more trouble, just as if you had run away from the police station. Do you understand?

The police officer and the local authority staff should be satisfied that the child has understood these points, offering further explanation if necessary. If an appropriate adult is aware that a child is due to be transferred to local authority accommodation, they may also be able to help explain the situation and prepare the child for the handover.

4.4. Where a local authority fails to provide accommodation it will reimburse the police.

The police are not funded to accommodate under-18 year olds in custody. It is therefore important that local police forces be reimbursed when a transfer to local authority care does not take place, for whatever reason. This reimbursement is a long-standing statutory obligation for local authorities

"Where a child has been detained under section 38 of the Police and Criminal Evidence Act 1984, and he is not being provided with accommodation by a local authority any reasonable expenses of accommodating him shall be recoverable from the local authority in whose area he is ordinarily resident. The level of expense for overnight detention must be determined by the police force, and should be based upon the costs of cell use, staffing, healthcare and any other provision required for a detainee. Mechanisms for the recovery of these costs must be determined at a local level and will vary depending upon any existing reimbursement arrangements between police forces and local authorities (Section 21(3) of the Children Act 1989)".

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4.5. Police forces and EDT will collect data on transfers.

The Emergency Duty Team (EDT) needs to have a mechanism in place to record and monitor all police requests and outcomes in relation to both "secure" and "suitable" accommodation. This needs to be in addition to the recording in Mosaic.

For evidence and reporting purposes, both police forces and local authorities are required to share this data to inform and improve effective working relationships. The data should also be shared with the local Safeguarding Children Board in order to hold relevant local agencies to account in complying with their statutory duties.

5. Procedures for seeking local authority accommodation

If during office hours, the police shall contact the Court to establish if the young person will appear before close of business. If the Court indicates that this will not be possible, the police should contact Children's Social Care directly to request a transfer to local authority accommodation.

The Custody Officer must make a comprehensive detention log entry, detailing to whom they spoke and the outcome, including the reasons why appropriate accommodation cannot be provided.

The EDT officer must make a similar record, noting the details of the Police Custody Officer's name and number, the station and why local authority accommodation is required.

The well-being of the child or young person is paramount and therefore it is acknowledged that it is preferable if the child or young person is afforded the opportunity to get a minimum eight hours sleep before an appearance in Court. If the charging decision is made by the police after 10.30 pm or it is deemed that the young person will not arrive at the location before midnight, the duty custody inspector should ensure that these issues are considered.

Should the final decision be not to transfer a young person to local authority accommodation, the reasons under the PACE Code of Practice (16.10) shall be clearly recorded on the form PACE 5 which must be sent immediately to the local youth offending agency.

The custody suite will contact the local authority nearest to it regarding any child originating from a local authority other than Nottingham or Nottinghamshire.

The local authority contacted by the police is responsible for the PACE transfer.

If the young person requires medical assessment or treatment whilst detained the police will ensure that it is provided, in line with current custody health care arrangements.

Children's social care and Nottinghamshire police will work together to ensure the placement provider receives sufficient information about the child or young person to ensure they can meet their needs and deal with any presenting risks.

The police will arrange transport for the child or young person to the accommodation placement.

The police will complete and provide the placement provider with a copy of the PER Form (Prisoner Escort Record), to provide relevant information to the placement.

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The local authority will arrange to transport the child or young person to their relevant Court appearance.

EDT must notify the YOT of all cases where the transfer to local authority accommodation did not take place and the rationale given by the police.

6. Escalation

It is acknowledged that on occasions there might be a disagreement between the local authority social care staff and the police custody staff on how a child or young person should be dealt with under the protocol. If matters cannot be resolved, either party shall request that matters be escalated for review by senior officers.

The duty Custody Inspector with responsibility for the custody suite where the child or young person is held shall perform this role for Nottinghamshire Police.

A Group Manager within Children's Social Care shall provide this function on behalf of the local authority.

Both parties shall ensure an accurate and exhaustive record of any escalation and investigation is kept.

Where it is not possible to reach agreement following escalation, matters shall be referred subsequently to Nottinghamshire Safeguarding Children's Board for review.

7. Monitoring and Review

This protocol shall be kept under regular review to ensure that it delivers its key aims, in particular reducing to a minimum the numbers of children and young people detained in police custody.