

**Protocol between  
Norfolk Children's Services and Norfolk Constabulary  
on the Transfer of Young People to  
Local Authority Accommodation  
from Police Custody**

Revised November 2016

*Synopsis: Children and young people should not be kept in police custody following charge and if they cannot go straight to court must be transferred to local authority accommodation. The only exception is where the young person is assessed as likely to cause serious physical or psychological injury to someone before they appear at court. Then a request should be made for the provision of secure accommodation. However, the local authority does not have to provide secure accommodation and if it cannot (or does not accept the need) then the young person must still be transferred unless serious harm to the public would occur. The local authority can place a young person at home or anywhere they decide is suitable.*

## **1. Background**

- 1.1. Under section 21 (2) (b) of the Children Act 1989<sup>1</sup> every local authority must provide accommodation for children [aged seventeen and under] whom they are requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984. There is an absolute duty on the local authority to provide accommodation where it is sought by the police<sup>2</sup>.
- 1.2. The amending Police and Criminal Justice Act, 2015 came into force on 26 October 2015. The amendments ensure that 17 year olds are treated as juveniles for all purposes under PACE. This means that 17 year olds will now receive the support of an appropriate adult in the same way as under 17s and that 17 year olds who are charged and have bail refused must be transferred to the care of the local authority in accordance with section 38(6) of PACE.
- 1.3. Under section 38 (6) of the Police and Criminal Evidence Act 1984, (which deals with police detention of arrested 'juveniles'), a young person must be

---

<sup>1</sup> As amended by the Police and Criminal Justice Act, 2015.

<sup>2</sup> R (on the application of M) v Gateshead Council (2006).

transferred to local authority accommodation unless it is **impracticable** to do so<sup>3</sup>. 'This applies as much to those young people charged during the daytime as it does to those to be held overnight, subject to a requirement under section 46 of the Police and Criminal Evidence Act 1984 to bring the young person before a court.' (PACE Code of Practice C note 16D).

- 1.4. The circumstances giving rise to being '**impracticable**' are narrow. Neither a young person's behaviour nor the nature of the offence provides grounds for the custody officer to decide it is impracticable to arrange the 'juvenile's' transfer to local authority care. The exception to the duty to transfer young people aged 12-17 involves requests for secure accommodation where placement in non-secure local authority accommodation 'would not be adequate to protect the public from **serious harm**'<sup>4</sup>. (*'Serious harm' in this context is taken to mean 'death or serious personal physical or psychological injury'*.)
- 1.5. The risk of serious harm must relate to the specific period prior to the court hearing in which case the police should request the local authority to provide **secure accommodation**. If this is not available, the young person may then be detained at the police station (Police Investigation Centre (PIC)) pending his or her court appearance.
- 1.6. There is no absolute duty on the local authority to provide secure accommodation if such accommodation is requested by a custody officer

---

<sup>3</sup>PACE Codes of Practice C note 16.7 When a juvenile is charged with an offence and the custody officer authorises their continued detention after charge, the custody officer must try to make arrangements for the juvenile to be taken into the care of a local authority to be detained pending appearance in court unless the custody officer certifies it is impracticable to do so or, in the case of a juvenile of at least 12 years old, no secure accommodation is available and there is a risk to the public of serious harm from that juvenile, in accordance with PACE, section 38(6). See *Note 16D*

<sup>4</sup> Note 16D Except as in paragraph 16.7, neither a juvenile's behaviour nor the nature of the offence provides grounds for the custody officer to decide it is impracticable to arrange the juvenile's transfer to local authority care. Similarly, the lack of secure local authority accommodation does not make it impracticable to transfer the juvenile. The availability of secure accommodation is only a factor in relation to a juvenile aged 12 or over when the local authority accommodation would not be adequate to protect the public from serious harm from them. The obligation to transfer a juvenile to local authority accommodation applies as much to a juvenile charged during the daytime as to a juvenile to be held overnight, subject to a requirement to bring the juvenile before a court under PACE, section 46.

when discharging his or her duty under section 38(6) of PACE. The lack of secure local authority accommodation does not make it impracticable to transfer the juvenile. Transfer is impracticable *only* in circumstances making it physically impossible. The availability of secure accommodation is only a factor in relation to a juvenile aged 12 or over when the local authority accommodation would not be adequate to protect the public from serious harm from them. (*The local authority does not have to provide secure accommodation and if it cannot the young person must still be transferred unless serious harm to the public would occur.*)

- 1.7. A young person transferred under these provisions for more than 24 hours is 'looked after' for the purposes of the Children Act<sup>5</sup> and leaving care legislation. Placement is at the discretion of the local authority and there is nothing precluding a return to the family home, although in determining how such young people are to be accommodated, the local authority needs to have regard to the fact that the custody officer has not authorised the young person's release. Also the young person remains detained and it is the responsibility of the placement to report unauthorised absence immediately.
- 1.8. Where secure accommodation is available, the local authority must also satisfy itself, independently of the police assessment, as to the risk of serious harm and that the statutory provisions (section 25 (1) Children Act 1989) which allow placement in secure facilities are met.
- 1.9. Where a young person is detained in custody pending his or her court appearance the reasons must be recorded on the custody record and the custody officer must complete a **certificate** to be produced before the court.
- 1.10. Young people arrested for breach of bail or on a warrant are not eligible for transfer to local authority accommodation.

---

<sup>5</sup> S22 Children Act 1989

## 2. Police and Children's Services responsibilities

- 2.1. The aim of this protocol is to safeguard children and young people through avoiding, so far as is practicable, their detention overnight in police custody following charge and the denial of bail.
- 2.2. Any decision not to transfer a child or young person aged 12 - 17 shall be clearly recorded in the custody record and a 'Juvenile Detention Certificate' completed.
- 2.3. If the charging decision is made by the police after 12.00 midnight it is acknowledged that transfer to Local Authority accommodation may be impractical and not in the best interests of the child or young person. However, when the police are aware that a charging decision will be requested from The Crown Prosecution Service and this is likely to be one of charge and remand they should contact the EDT at the earliest opportunity to enable arrangements for transfer to take place prior to the decision being made.

The police should ensure that the young person is ready to transfer as soon as the decision is finalised, should the decision be to not charge the young person then the EDT will be informed to cancel arrangements.

Should it not be possible to transfer the young person due to the time of night then rationale as to why this decision is appropriate will be recorded by both the police and social services. There will, however, be circumstances where the child or young person is so vulnerable that transfer to local authority accommodation should take place regardless of the time.

- 2.4. Where a transfer to non secure/secure local authority accommodation is requested by the police between the hours of 8.45am and 5.00pm the process is as follows:

- **Check if the young person has an allocated social worker by contacting the Multi-Agency Safeguarding Hub ( MASH) via 0344 800 8020 advising them that a transfer to local authority accommodation is being sought under section 38 (6) of PACE. The allocated social worker will deal with the transfer request.**
- **If there isn't an allocated social worker or the young person is not known to Children's Services the MASH Manager will direct your request to the relevant Children's Services duty team.**

2.5 Where a transfer to non-secure/secure local authority accommodation is requested by the police after 5.00pm (4.35pm on Fridays) and up to 8.45 am the process is as follows:

**Contact NCC (Care Connect) on 0344 800 8020 and advise them that a transfer to local authority accommodation is being sought under section 38 (6) of PACE. Your request will be forwarded to the Emergency Duty Team (EDT).**

2.6. Where a transfer to local authority accommodation **is not** made a copy of the certificate should be produced giving the young person's full name and the reason for not transferring. The certificate should be provided to the court and a copy sent by secure email to Norfolk Youth Offending Team at:

[grpnorfolk-yot-norwichsecure@norfolk.gcsx.gov.uk](mailto:grpnorfolk-yot-norwichsecure@norfolk.gcsx.gov.uk)

2.7 Where a young person is transferred to local authority accommodation, it is the responsibility of Children's Services staff or their representatives to ensure that the young person is **collected** from the relevant PIC.

2.8 Where a young person is transferred to local authority accommodation, it is the responsibility of Children's Services or their representatives to ensure that the young person is **escorted to court** and that the Court Usher and Norfolk Youth

Offending Team are advised of his or her arrival at court. The Norfolk Youth Offending Team court officer should ensure that the young person is dealt with by the court as soon as possible.

### **3. Court Responsibilities**

3.1. Where a young person aged 17 or under is detained in custody overnight and produced to court, a copy of the certificate should be made available to the court stating the reasons why a transfer to local authority accommodation was not made.

3.2 Where a detained young person is produced to court from local authority accommodation the court should ensure that the young person is dealt with as soon as possible.

### **4. Joint Norfolk/Suffolk/Cambridgeshire Police Investigation Centres (PICs)**

4.1 Accommodation for young people from Suffolk and Cambridgeshire held in joint PICs (King's Lynn, Great Yarmouth and Bury St Edmunds) will usually be sought from the local authority in which the child or young person resides. In situations where the responsible local authority cannot provide accommodation for a young person, Norfolk MASH/EDT should be consulted. See paragraph 5 below.

### **5. Out of County Children and Young People Residing or Arrested in Norfolk**

5.1. There will be situations where children and young people who are not the responsibility of Norfolk Children's Services are arrested and charged in Norfolk. Their welfare needs to be considered by Norfolk Children's Services in consultation with their home local authority and agreement obtained to the transfer to local authority accommodation in Norfolk if eligible.

5.2. Norfolk also hosts a large number of residential accommodation units which provide homes for children and young people from other local authorities.

Many of these children and young people are vulnerable and with complex needs. Any child who is resident in Norfolk (and looked after by another Local Authority) is eligible for the PACE Bed but they will not receive 'looked after services' and are not 'accommodated' by Norfolk Children's Services

5.3. In either of the situations in 5.1 & 5.2, the custody officer should consult Norfolk Children's Services by contacting **the MASH/EDT via NCC (Care Connect) on 0344 800 8020.**

**6. Monitoring.**

6.1 The protocol will be reviewed annually on or about 1 February or in response to legislative/policy changes.

6.2. The cases of all children and young people eligible for transfer to local authority accommodation will be reviewed on a quarterly basis by the Joint Norfolk & Suffolk Safeguarding Children and Young People in Police Custody Group.

6.3 A selection of cases will also be audited on a twice yearly using Norfolk Constabulary, Children's Services and Norfolk Youth Offending Team records.

..... **Date:** .....

**Assistant Director, Children's Services**

..... **Date:** .....

**Chief Inspector**  
**Head of Norfolk and Suffolk Custody Services**  
**Norfolk Constabulary**