

# Suffolk Protocol on Transfer of Young People to Local Authority Accommodation from Police Custody

*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 every local authority must provide accommodation for children 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>1</sup>.

1.2. 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 transferred to local authority accommodation unless it is **impracticable** to do so<sup>2</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).

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<sup>1</sup> R (on the application of M) v Gateshead Council (2006).

<sup>2</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*

1.3. 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 12-16 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>3</sup>. (**'Serious harm'** in this context is taken to mean 'death or serious personal physical or psychological injury'.)

***From 26th October 2015 the definition of an 'arrested juvenile' in section 37(15) of PACE was amended to include a person aged 17 (the definition previously covered 10 to 16 year olds). As a result of this change, paragraph 16.7 does apply to 17 year old detainees.***

1.4. 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.

1.5. There is no absolute duty on the local authority to provide secure accommodation if such accommodation is requested by a custody officer 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*

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<sup>3</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.

*provide secure accommodation and if it cannot the young person must still be transferred unless serious harm to the public would occur.)*

1.6. A young person transferred under these provisions for more than 24 hours is 'looked after' for the purposes of the Children Act<sup>4</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.

1.7. 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. Although it is acknowledged that there is currently no secure accommodation available in Suffolk.

1.8. 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** (Appendix 1) to be produced before the court.

1.9. Young people arrested for breach of bail or on a warrant are not eligible for transfer to local authority accommodation.

## **2. Process for transfer to local authority accommodation.**

2.1. 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:

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<sup>4</sup> S22 Children Act 1989

- ***Check if the young person has an allocated social worker by contacting Customer First (0808 800 4005) advising them that a transfer to local authority accommodation is being sought under section 38 (6) of PACE. If allocated then 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 Customer First call handler will direct your request to the Children's Services Access Team who will then direct your request to the relevant Children's Services Practice Manager.***

2.2. 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 Customer First (0808 800 4005) 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 Service (EDS).***

***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 (or EDS) 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.***

2.3. The allocated Social Worker or (if an unallocated case) the Children's Services Practice Manager (or if out of hours the Emergency Duty Social worker) will discuss available information about the young person with the police as part of the risk assessment required to provide appropriate local authority accommodation. All placement requests need to be authorised by the Head of Corporate Parenting Services.

2.4. Where a transfer to local authority accommodation **is not** made a copy of the certificate should be produced to the court and sent by secure email to Suffolk Youth Offending Service at the address contained in the certificate (see Appendix 1).

2.5 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 escorted to court and that the Court Usher and Suffolk Youth Offending Service are advised of his or her arrival at court. The Suffolk Youth Offending Service court officer should ensure that the young person is dealt with by the court as soon as possible. When a young person has been placed at the crash bed facility at Martlesham Heath between Sunday to Thursday either the crash bed staff or the allocated social worker (if an allocated case) will transport the young person to the YOS office local to the court that the young person is required to attend by 9.30am. In these circumstances the YOS staff will then be responsible for escorting the young person to the court. If the placement at the crash bed facility at Martlesham Heath requires the young person to attend a court on a Saturday or a Bank Holiday then it will be the responsibility of either crash bed staff or the allocated social worker (if an allocated case) to arrange for the young person to be escorted to court.

If a young person is placed elsewhere then it is the responsibility of the person arranging the placement to also make the arrangements for the young person to be escorted to the court, this could include discussion with YOS staff for assistance.

### **3. Court Responsibilities.**

3.1. Where a young person aged 16 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 Police Investigation Centres (PICs).**

4.1 Accommodation for young people from Norfolk and Cambridgeshire held in joint PICs (King's Lynn, Great Yarmouth and Bury St Edmunds) will be sought from the local authority in which the child or young person resides.

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

5.1 There will be situations where children and young people who are not the responsibility of Suffolk Children's Services (or Norfolk /Cambridgeshire) are arrested and held in police custody overnight. Their welfare needs to be considered by Suffolk Children's Services in consultation with their home local authority.

5.2 Suffolk also hosts a 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.

5.2 Where a non-Suffolk child or young person is likely to be detained in police custody overnight, the custody officer should consult Suffolk Children's Services by contacting *Customer First (0808 800 4005)*.

#### **6. Monitoring.**

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

6.2 Audits will be undertaken twice yearly using Suffolk Constabulary, Children's Services and Suffolk Youth Offending Service records.

**Appendix 1.**

**CERTIFICATE**

*I hereby certify that ..... born ..... has been charged with the offence(s) of ..... and has been detained in police custody for the following reasons*

- \*(a) It is impracticable to make arrangements for him/her to be taken into the care of and detained by the local authority; or*
- \*(b) The arrested juvenile has attained the age of 12 years, no secure accommodation is available and keeping him/her in other local authority accommodation would not be adequate to protect the public from **serious harm** from that juvenile.*

*\* Delete (a) or (b) and then give your specific reasons for the undeleted option in the space below*

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*Custody Officer ..... Station ..... Date .....*

Please send a copy of the certificate to Suffolk Youth Offending Service using secure email to [YOTIpswichAdmin@suffolk.gcsx.gov.uk](mailto:YOTIpswichAdmin@suffolk.gcsx.gov.uk)