

## Cabinet

10 May 2018

### Concordat on Children in Custody

#### Recommendation

That Warwickshire County Council becomes a signatory to the Concordat on Children in Custody and adopts the principles and practice detailed within.

#### 1. Introduction

- 1.1 Concerns regarding the detention of children in police custody have been highlighted on many occasions over the past few years. In 2013 an academic and noted author on child welfare and criminal justice, Charles Bell, made a Freedom of Information Act 2000 request to all local authorities in England, requesting information about police detention, transfers from police detention to local authority accommodation (PACE transfers) and the use of secure accommodation. Warwickshire Youth Justice Service (WYJS) replied to this request and received the following reply from Charles:
  - 1.1.1 “Please thank the author of this reply for an excellent response. It may well be that arrangements in Warwickshire....proactive YOT role, low levels of section 38 requests by police etc. may provide a model of excellence for practice”.
- 1.2 Ongoing contact followed between Mr Bell and WYJS in order to share best practice and WYJS became nationally recognized as a centre of excellence for safeguarding young people in custody and avoidance of detention following his research and resultant publications.
- 1.3 Following these publications numerous articles were published by a number of organisations interested in the welfare of children in the criminal justice system criticising the use of police detention and the apparent lack of local authorities that provide accommodation to avoid such detentions. As a result, the government established a working group in 2014 to address the long-standing problems regarding the transfer of children from police custody to local authority accommodation.
- 1.4 This group, which included representatives from across government, found that police forces and local authorities often misunderstand their statutory obligations and very few collaborated effectively to ensure transfers occurred. The group produced the Concordat on Children in Custody (Appendix) in order to improve understanding and help forces and local authorities build effective collaboration at a local level; the concordat clearly sets out each party’s duties and provides a protocol for how transfers should work in practice.

## 2. National Response to the Concordat

- 2.1 At the time of writing this report, 25 of the 43 Police Force areas and 86 councils had signed the concordat.
- 2.2 Just for Kids Law issued a press release in July 2016 following legal action they brought against Islington Council in regard to a vulnerable 14 year old boy detained overnight in a police cell on multiple occasions. In the publication they cite the issue as a national problem with 40,000 (800 per week) children in 2011-12 detained overnight. [Just for Kids press release](#)
- 2.3 Section 21 of the Children Act 1989 places an absolute duty on the local authority to provide accommodation when requested by the police; the type of accommodation provided is determined by the local authority. If the police can demonstrate secure accommodation is necessary to adequately protect the public from serious harm, the local authority should seek a placement in secure accommodation.
- 2.4 Where children are detained the police must provide a certificate to the court detailing the reason for the detention. However, where accommodation is not provided, the police can recover all reasonable expenses for the accommodation provided from the local authority.
- 2.5 Detention of young people in police custody in Warwickshire has been regularly reported to the WYJS Chief Officers' Board as part of the quarterly performance reporting by the WYJS Manager. 2016/17 saw 13 young people detained overnight that should have been PACE transferred and the WYJS manager arranged for the training of out of hours staff by WYJS managers to remind them of their obligations to accommodate; to date this year no Warwickshire young people have been detained. However, 11 children from other authorities have been detained as a result of the home local authority not providing accommodation.
- 2.6 Warwickshire's Out of Hours Service has a number of foster placements available for use for PACE transfers out of hours which support compliance with the concordat. On the rare occasion where secure accommodation is required this is currently provided.
- 2.5 The Association of Directors of Children's Services (ADCS) reported on the concordat in its Bulletin to members on 10th November, 2017:
- 2.5.1 "A working group, led by the Home Office, has produced a concordat for local adoption to address long-standing problems in the transfer of children from police custody to local authority accommodation, which is a requirement under the Police and Criminal Evidence Act 1984 and the Children Act 1989. ADCS was represented on this group and whilst the Association was not a signatory it is recognised that the principles set out in the document represent good practice".

### 3. Warwickshire's Position

- 3.1 Many local authorities and police force areas have become signatories to this concordat, however whilst Warwickshire Police has signed, Warwickshire County Council has not.
- 3.2 Warwickshire County Council is committed to ensuring children are safeguarded and has demonstrated ongoing support for WYJS in achieving best outcomes for children in the criminal justice system. In light of this, and the best practice identified by Mr Bell, it is recommended that the County Council becomes a signatory to the Concordat.
- 3.3 There are no identified operational or resource implications for Warwickshire becoming a signatory to the concordat.

### 4. Proposal

- 4.1 That Warwickshire County Council becomes a signatory to the Concordat on Children in Custody in order to ensure all parties involved in supporting children in police custody are afforded the best possible service.

### Background Papers

None

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Home Office



**CONCORDAT  
ON CHILDREN  
IN CUSTODY**

Preventing the detention of children  
in police stations following charge



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# INTRODUCTION

A night in a cell is an intimidating experience. Police custody facilities are designed to detain adults suspected of criminal activity, and they offer little in the way of comfort or emotional reassurance. For a child – especially one deprived of familial support – a prolonged stay in this environment can be harmful.

Children brought into police custody are in a particularly vulnerable position; not only by virtue of their age, but also because of the circumstances which brought them into contact with the police. They may be under the influence of drugs or alcohol, recovering from a recent trauma or coming to terms with events that may have a lasting impact on their lives. Judged even against the reduced capability of a child, they will not be in a strong position to cope with the stressful and demanding nature of a night in police custody.

The law already recognises that police cells are not a suitable place for children. The Police and Criminal Evidence Act 1984 requires the transfer of children who have been charged and denied bail to more appropriate Local Authority accommodation, with a related duty in the Children Act 1989 for Local Authorities to accept these transfers. Section 11 of the Children Act 2004 requires both police and Local Authorities to have regard to the welfare and protection of children welfare of children, and in 1991 the UK ratified the **UN Convention on the Rights of the Child**, agreeing that custody be used “only as a measure of last resort and for the shortest appropriate period of time”.

Despite this, failings have been identified by Her Majesty’s Inspectorate of the Constabulary (*The welfare of vulnerable people in custody*, March 2015), the All Party Parliamentary Group for Children (*“It’s all about trust”: Building good relationships between children and the police*, October 2014), the Criminal Justice Joint

Inspection and the Inspection of Youth Offending (*Who’s looking out for the children?: A joint inspection of Appropriate Adult provision and children in detention after charge*, December 2011) and the Howard League for Penal Reform (*The overnight detention of children in police cells*, 2011). It is clear that, in many cases, the law is not being followed and children are not receiving the support to which the law entitles them.

In this concordat we recognise that we must work together to ensure that legal duties are met.

A diverse group of agencies has contributed to this document, in recognition of the fact that a child’s journey from arrest to court is overseen by a variety of professionals with varying duties. Each is entrusted with the responsibility, not only to ensure that justice is done and that the public is protected, but to ensure that it is done humanely and in full accordance with the law. This concordat sets out – clearly and with the agreement of those involved – the role that each should play to ensure that this responsibility is fulfilled.





THE LAW COURT



# PURPOSE

## The problem

Under the Police and Criminal Evidence Act 1984, the detention of a child (who has not been arrested on a warrant or for breach of bail) after charge is permissible only where exceptional circumstances prevent movement (such as extreme weather conditions) or where the child is deemed to pose a risk of serious harm to the public between being charged and appearing at court *and* no Local Authority secure accommodation is available. The bar to justify detention in a police cell is therefore very high, and – whilst there is no exact national data on the overnight detention of children following charge – indicators suggest that this bar is not always being met.

This conclusion is supported by the findings of the various reports referred to in the introduction. These include testimonies from inspectors who have witnessed failures first-hand, from police officers who recognise that the law is not being followed and from children who have experienced unjustified overnight detentions. In 2014, the All Party Parliamentary Group for Children found that the process of police contacting Local Authorities to arrange accommodation for charged children had become a “tick box exercise” which often lacked even the expectation of a positive outcome, and that in many cases “it has become the norm for police custody sergeants to not even place a request with their Local Authority, assuming that no accommodation will be provided”. In 2015, HMIC cited significant shortcomings in custody arrangements for children, including a lack of data around the police’s efforts to secure Local Authority accommodation for children.

It seems that in many of these cases the failure to comply with the law stems from confusion as to its requirements. Custody officers are often not clear as to whether they should request secure accommodation or not, and sometimes interpret the Police and Criminal Evidence Act’s use of the term ‘impracticable’ as meaning ‘difficult’ or ‘inconvenient’, dramatically lowering the bar for continuing detainment. Local Authority staff are not always aware of their absolute legal duty to provide accommodation and often believe that a lack of available space in children’s homes justifies leaving a child in a police cell. Many custody officers and Local Authority staff are also unaware of the police’s power to recover costs from Local Authorities when a transfer is not carried out – a long-standing legislative measure which should incentivise both parties to fulfil their obligations.

Before setting out what this concordat aims to achieve, it is important to acknowledge what it cannot achieve. It is not a substitute for the effective, collaborative arrangements between police forces and Local Authorities at a local level that are essential to ensure transfers happen as they should. It will clarify the legal requirements and offer guidance as to how these are put into practice, but it cannot dictate how transfers actually work in your local area: the logistics and the practicalities of this can only be worked out at a local level. This concordat should be the starting point for local, multi-agency discussions.

## Aims

For police and Local Authorities to fulfil their statutory obligations and meet the needs of children in police custody, effective and closely monitored local arrangements will need to be in place. This will require the interest and active input not only of frontline staff, but of Chief Constables, Directors of Children's Services, Police and Crime Commissioners, Local Safeguarding Children Boards and more. This concordat aims:

- **To support police forces and Local Authorities across England in complying with their statutory responsibilities with regard to children in police custody**  
The concordat will summarise each party's duties in a way that is clear, accessible and unlikely to result in any further ambiguity or confusion. By setting out a series of clear principles, and providing guidance as to how these can be achieved in practice, it will help front-line staff to understand what compliance looks like and what it means for their day-to-day work. It will also highlight best practice to help police forces and Local Authorities prepare for future HMIC and Ofsted inspections of child transfer arrangements. It will assist Local Safeguarding Children Boards in holding local agencies to account for the delivery of their statutory responsibilities for the transfer of children in police custody.

- **To bring about a decrease in the number of children held overnight in police custody**

This concordat will have been successful when we see a decline in the number of children held overnight and when government, inspectorates, local safeguarding bodies, pressure groups and charities can scrutinise the case of any child held in police custody and have no doubt that the child is being held in full accordance with the law.

## National Partners

The following national organisations have worked together in partnership to develop and endorse the principles described in this concordat and strongly encourage local agencies to adopt them.



### Home Office

The Home Office is the government department responsible for policing. The Home Secretary has the power to commission Her Majesty's Inspectorate of the Constabulary (HMIC) to carry out thematic inspections of specific issues in police forces and in 2014 commissioned the report into vulnerable people in custody, which highlighted many of the issues addressed by this concordat.



### Department for Education

The Department for Education is responsible for the law and national policy governing children's services in England. In January 2015 the Secretary of State for Education, joined the Home Secretary in highlighting problems associated with children in police custody.



### College of Policing

The College is the professional body for policing. It sets the standards of professional policing in England and Wales and ensures that all police officers and staff have the right knowledge and skills to do their job. The College's Authorised Professional Practice is a consolidated body of guidance and offers invaluable detail on how the police can deliver the best service possible.



Youth Justice Board  
Bwrdd Cyfiawnder Ieuencid

The Youth Justice Board (YJB) oversees the youth justice system in England and Wales and seeks to ensure that every child and young person lives a safe and crime-free life, and makes a positive contribution to society. As part of its statutory duties, the YJB is responsible for commissioning and monitoring the youth secure estate. The YJB also places young people in secure establishments remanded or sentenced by a court balancing safeguarding and public protection concerns.



Appropriate Adults safeguard the interests of children and young persons detained or questioned by police officers. This includes ensuring their legal rights, welfare entitlements and effective participation in police processes.



Independent Custody Visitors make unannounced visits to police custody facilities in England and Wales to ensure that the fair treatment and well-being of detainees remains high on police forces' agenda. They monitor police forces' response to suggestions from Her Majesty's Inspectorate of the Constabulary (HMIC) and are part of the UK's National Preventative Mechanism on the Optional Protocol to the Convention Against Torture (OPCAT).



The Association of Independent LSCB Chairs is the national membership organisation for Independent Chairs of Local Safeguarding Children Boards. Its vision is to improve safeguarding outcomes for children, through supporting and strengthening Independent LSCB Chairs and LSCB Partnerships.



The Children's Commissioner has a statutory duty to promote and protect the rights of all children in England in accordance with the United Nations Convention on the Rights of the Child. It is her job to make life better for all children and young people by making sure their rights are respected and realised.



The Association of Police and Crime Commissioners (APCC) is the national body that supports Police and Crime Commissioners (PCCs), and other local policing bodies across England and Wales, to provide national leadership and influence change in the policing and criminal justice landscape.



The NPCC brings together 43 operationally independent and locally accountable chief constables and their chief officer teams to coordinate national operational policing. It works closely with the College of Policing, which is responsible for developing professional standards, to develop national approaches on issues.



ADCS is a membership organisation for those who hold leadership roles in children's services departments in Local Authorities in England. ADCS members specialise in developing, commissioning and leading the delivery of services to children and young people.

### **Signatories**

Police forces and Local Authorities have become signatories to commit to adopting and implementing the Concordat's principles and practice. They will work together to ensure that transfers always happen as they should. A full list of signatories to the Concordat is available at [www.gov.uk/government/publications/concordat-on-children-in-custody](http://www.gov.uk/government/publications/concordat-on-children-in-custody).





THE LAW COURTS

# PRINCIPLES AND PRACTICE

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## 1. Whenever possible, charged children will be released on bail

After a child has been charged, there is a presumption that they will be granted bail. Bail is by far the most preferable option for most children charged with an offence. It ensures that they spend as little time as possible in police custody and, in ideal circumstances, will allow the child to return home in advance of their court appearance.

People of all age groups have a right to bail under the Bail Act 1976 and there is a presumption that this right will be granted. The decision to deprive an individual of this right is always a serious step, but especially so in the case of children. In some cases, however, the prospect of releasing a child on bail may raise concerns that it would prevent justice being done, lead to further crimes or even compromise the young person's safety. A full list of possible reasons for denying the right to bail after charge can be found in **section 38 (1) of the Police and Criminal Evidence Act 1984**. It is important to bear in mind that concerns which might lead to the refusal or restriction of bail must relate exclusively to the period of time between the child's release and their appearance at court. This consideration may allay a custody officer's concerns.

If concerns do exist around granting the child their right to bail, the **custody officer** must seriously consider whether these concerns would be suitably allayed by placing conditions on the child's bail.

### **Conditional bail**

Conditional bail was introduced to ensure that detainees are released on bail whenever possible, even when the prospect of their immediate release from custody does raise some concerns.

Conditions of bail may involve restrictions related to residence or exclusion zones, imposing a curfew, the requirement to sign on at a police station or a requirement to attend educational training.

A **custody officer** should consider precisely what their concerns are about releasing a child on bail, and make every effort to allay these concerns with conditions. It is useful to contact the Local Authority's Youth Offending Team to discuss concerns and appropriate conditions, which the Youth Offending Team may be able to help enforce.

**Appropriate adults** should observe this decision making process carefully. In any circumstance where they think the criteria for denying the right to bail have not been met, they should make representations to custody officers and ensure that the child's legal advisor is informed. Where the custody officer outlines the concerns that have led to the denial of bail, the appropriate adult should engage the officer in discussion to explore whether these concerns could be alleviated by conditions.

If, eventually, **the custody officer** decides that the right to bail – even with conditions – must be refused and the child must be retained in custody, s/he must make a written record of the reasons for this refusal as soon as possible. This is a requirement under **section 38 (3) of the Police and Criminal Evidence Act 1984**.

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## 2. Children denied bail will be transferred whenever practicable

After a child is charged with an offence, **custody officers** have a duty under section 38(6) of the Police and Criminal Evidence Act 1984 (PACE) to secure the transfer of the arrested child to Local Authority accommodation; **Local Authorities** have a duty to accommodate the child under section 21 of the Children Act 1989. However, one of the circumstances where PACE allows police to retain a child in custody is where a transfer is impracticable.



In this context, the term ‘impracticable’, is often misunderstood. It does **not**:

- a) relate to the availability of Local Authority accommodation or transport;
- b) relate to the nature of the accommodation offered by the Local Authority;
- c) relate to the child’s behaviour or the nature of the offence, or;
- d) mean ‘difficult’ or ‘inconvenient’.

Rather, ‘impracticable’ should be taken to mean that **exceptional circumstances render movement of the child impossible** or that the child is due at court in such a short space of time that transfer would deprive them of rest or cause them to miss a court appearance. This must be judged on a case-by-case basis, and a decision of no transfer due to impracticability should be cleared by a **duty inspector**.

If the decision is made that transfer is impracticable, the **custody officer** must carefully record the reasons behind this decision on the PACE 38(6) certificate (a standard template of this form is attached at Annex C). The completion of this certificate is a requirement under **section 38 (6) of the Police and Criminal Evidence Act 1984**. It must be presented to the court before which the child appears. Any individual who receives this certificate will be able to flag apparent or suspected failures to the responsible police force via an Online Flagging Mechanism (more information on this mechanism can be found in Annex D). This sends the relevant Arrest Summons Number (ASN) to a dedicated inbox at the responsible force, allowing the force to review the case and determine whether failures took place.

**Appropriate Adults** can help to make sure that transfers are secured whenever practicable. In cases where transfer is deemed impracticable, they should discuss this decision with custody officers to seek clarification that the movement of the child is genuinely impracticable and that retention in police custody is the best available option. They should also encourage custody

officers to charge children as soon as it is clear that this is the appropriate decision, in order to avoid transfers being complicated due to the lateness of the charge.

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### 3. Secure accommodation will be requested only when necessary

If a **custody officer** decides that transfer is practicable, their next step is to determine whether secure or non-secure accommodation is required.

The Police and Criminal Evidence Act is very clear about the criteria required for the police to justify the request of secure accommodation: the child must be 12 years or older and the **custody officer** must believe that this child poses a risk of serious harm to the public between being charged and appearing at court. This is a very high bar for a child to meet.

There will of course be cases where it is important and right to request secure accommodation, but a **custody officer** must consider this carefully and be willing to discuss their judgement with Appropriate Adults. **Appropriate Adults** should try to understand the custody officer’s concerns; however, if they are not convinced that the child genuinely poses this high and threatening level of risk, they should make representations for the request of non-secure accommodation instead. It should be remembered that a request for non-secure accommodation will be accompanied by a full explanation of the police’s concerns, which will inform the Local Authority’s choice of accommodation and ensure that all risks are considered.

Once a **custody officer** is confident that secure accommodation is required, this decision should be cleared by the **duty inspector**. The **custody officer** should then contact the Local Authority and request secure accommodation for the child.

The specific point of contact will vary depending on the Local Authority and should be confirmed at a local level. If unsure, a sensible first point of contact may be the **Youth Offending Team** or **Emergency Duty Team** (a contact list is available [here](#)).

The **custody officer** should give the Local Authority the following information:

1. The child's personal information, including details of any vulnerabilities;
2. The nature of the offence;
3. An explanation as to why the child poses a risk of serious harm to the public.

### Local Authorities and Secure Accommodation

When the police decide whether to request secure accommodation for a child, they employ their own test: does the child pose a risk of serious harm to the public?

Under **section 25 of the Children Act 1989\***, Local Authorities also have minimum criteria that a child must meet in order to be placed in secure accommodation. The child may only be lawfully detained in such accommodation if the Local Authority believes:

- (a) that -
- (i) he has a history of absconding and is likely to abscond from any other description of accommodation; and
  - (ii) if he absconds, he is likely to suffer significant harm; or
- (b) that if he is kept in any other description of accommodation he **is likely to injure himself or other persons**.

Although the tests employed by police and Local Authorities vary slightly, a child who meets the police criteria is also likely to meet the Local Authority criteria, due to the risk of causing harm. (It should be remembered that the assessment is not of whether the child is generally capable of causing harm, but of whether they are likely to cause harm in the period between being charged and appearing at court).

If a situation arises where a Local Authority disagrees with a custody officer's assessment of risk and feels the Local Authority cannot lawfully meet the criteria for secure accommodation under the Children Act, the matter should be escalated as quickly as possible under whatever local arrangements are in place. A decision must be reached as to the required accommodation.

There may also be circumstances in which the police request non-secure accommodation but the Local Authority feels that secure accommodation is needed. After accepting a request for non-secure accommodation, it is for the Local Authority to determine which type of accommodation is most appropriate: secure accommodation is one of the options available. However, the law does not recognise a situation where the police request non-secure accommodation but the Local Authority refuses to provide any accommodation because they believe secure accommodation is more appropriate. Police requests for non-secure accommodation must always be accepted, regardless of the type of accommodation the Local Authority then decides to place the child in.

\* As modified by the Children (Secure Accommodation) Regulations 1991.

### Which Local Authority?

According to the ruling in *M v Gateshead Council* (2006), **a police force can contact any Local Authority it chooses** with a request for secure or non-secure accommodation, and it is then that authority which is bound to provide accommodation under the Children Act 1989. Clearly, the decision of which to contact will be determined by the officer's common sense: the most sensible choices would generally be the authority in which the police station is located, the authority in which the crime was committed or the authority in which the child is normally resident.

The starting position of **Local Authority** staff receiving this request should be to confirm that secure accommodation is definitely needed. They should try to understand the reasons for the custody officer's belief that the child poses a risk of serious harm to the public between transfer and their court appearance. If unconvinced that secure accommodation is required, **Local Authority staff** should challenge the custody officer's request and discuss potentially suitable alternatives. However, it is ultimately the custody officer's decision as to what type of accommodation they request, and disagreement with police judgement is not a lawful reason for a Local Authority to refuse a transfer request.

Following a request for secure accommodation, the **Local Authority** must do everything within its power to find secure accommodation for the child in question.

If the **Local Authority** fails to find any secure placements, or reach agreement with the police as to any suitable alternative for the child, then **custody officers** will have no choice but to retain the child in police custody for the protection of the public.

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### 4. Local Authorities will always accept requests for non-secure accommodation

A police request for non-secure Local Authority accommodation is appropriate for the vast majority of charged children who cannot be released on bail. It is required for:

- children under 12 years of age;
- children who do not pose a risk of serious harm to the public.

After a **custody officer** has decided to deny a child of the right to bail and has determined that non-secure accommodation is appropriate, s/he must contact the Local Authority (in accordance with local arrangements or, if unsure, the **Youth Offending Team** or **Emergency Duty Team**) to request accommodation for the child. The **custody officer** should provide Local Authority staff with the following information:

1. The child's personal information, including details of any vulnerabilities;
2. The nature of the offence;
3. An explanation as to why the child has been denied the right of bail, and why conditions would not be sufficient to allay these concerns.

The starting position of the **Local Authority** should be to confirm the reasons for the refusal of bail and understand the reasons why conditional bail is not possible, in order to make an informed decision as to what type of accommodation is suitable.

It is up to the **Local Authority** to determine the most appropriate type of non-secure accommodation for the child, and it has considerable freedom in the options open to it. Where possible, the most preferable alternative is to return the child to the care of family or friends, although obvious exceptions to this would include instances where the only available options raise safeguarding concerns. Other options include placements with foster families or in a children's home.

**Local Authorities** may also decide to place children in secure accommodation, even if this was not the custody officer's request. The circumstances in which a placement in secure accommodation is permissible are outlined in *section 25(1) of the Children Act 1989*\*. Note that the Local Authority still has an absolute statutory duty to accept a request for non-secure accommodation, even if it then opts to accommodate the child in secure accommodation.

If a **custody officer's** request for non-secure accommodation is not met by the **Local Authority**, s/he should contact the duty inspector immediately. The **duty inspector** should seek a resolution which prevents a failure to secure accommodation, escalating the matter further if required.

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## 5. The power to detain will be transferred to the Local Authority

When a **police officer** hands a child over to **Local Authority** staff, they also transfer the power to lawfully detain that child:

*Where an arrested juvenile is moved to Local Authority accommodation under subsection (6) above, it shall be lawful for any person acting on behalf of the authority to detain him.*  
PACE 1984, section 38(6B).

Simultaneously, section 39(4) emphasises that, at the point of transfer to the Local Authority, **police custody officers'** responsibility for the child ceases entirely.

It is important that **Local Authority** staff remain conscious of the level of responsibility that this transfer of power places upon them. A custody officer has taken the decision that this child must be held in lawful custody until their appearance at court; following the transfer, **Local Authority**

staff are accountable for ensuring that this lawful custody is upheld. They become the custodians, with the same legal responsibility toward the child as a police custody officer has toward a detainee in a police cell. **This includes the duty to transport the child to court.**

When transferred from police custody to Local Authority accommodation (especially non-secure accommodation), the opportunities for a child to abscond are likely to increase. It may also appear to the child that the nature of their detention has become less serious and that absconding from Local Authority accommodation is different to escaping from a police cell.

Legally, this is not the case. **If the child absconds they are committing the serious offence of escaping lawful custody.**

It is important that the child is made to understand this: firstly in order to prevent genuine misunderstandings leading the child into more difficulties, and secondly to ensure that any subsequent charge of escaping lawful custody is justifiable, as it will likely rely on evidence that the child understood the terms and nature of their detention.

It is therefore essential that the nature of the detention is clearly emphasised and explained to the child when the handover from police to Local Authority takes place.

As the child is transferred from the police to the Local Authority, the **police officer** should – in the presence of Local Authority staff – 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.

\* As modified by the Children (Secure Accommodation) Regulations 1991.



- 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.
- 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.

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.

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## 6. 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 are 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. Section 21(3) of the Children Act 1989 states that:

*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.

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## 7. Police forces will collect data on transfers

Clear data on the success rate of transfer requests is the first step towards identifying and addressing systemic problems. It provides an evidence base to inform discussions between the various local partners whose cooperation is required to ensure that transfers always happen as they should.

Using the standard template for 38(6) transfer data - available from the Home Office - forces should collect data on:

1. The number of children (i.e. under 18s) who are charged and detained in police custody overnight with no request for any accommodation made by police to the Local Authority;
2. The number of requests made for secure accommodation;
3. The number of transfers to Local Authority secure accommodation as a result of the request in (2);
4. The number of requests made for non-secure accommodation;
5. The number of transfers to Local Authority non-secure accommodation as a result of the request in (4).

This quantitative data is necessary to identify where problems are being encountered, both within force areas and nationally. However, in order to establish the reasons for these problems, forces may also find it useful to collect more qualitative data internally: this might include, for example, the reasons for not requesting accommodation from the Local Authority and the reasons given by the Local Authority for refusing a transfer requests.

Police forces should share this data with Local Authorities and other relevant partners to inform effective working relationships and with Local Safeguarding Children Boards to enable them to hold relevant local agencies to account for complying with their statutory duties.

# CASE STUDY



**In 2012, a HMIC inspection of GMP highlighted problems in the transfer of children from police custody to Local Authority accommodation. In response, GMP gave Inspector Gail Spruce the new role of Custody Inspectorate and tasked her with improving the situation on children in custody. Here, she tells us about the journey so far:**

I took on the new role of GMP's Custody Inspectorate in 2014. The aim of the job is to formulate and drive custody policy across all sites, including addressing issues raised by new reports or guidance and responding to HMIC, IPCC and coroners' recommendations. I also monitor emerging risks or concerns, test policy compliance and gauge the success of new initiatives by frequently dip-sampling custody processes.

The PACE 38(6) issue was one of the first challenges I encountered. Problems had been highlighted by a HMIC report and it was clear that the solution required close collaboration with the Local Authorities in our force area. This wasn't easy: aside from the fact that there were 10 separate authorities in the GMP area, many were initially reluctant to enter into a dialogue and it was clear that knowledge of the legislative requirements varied enormously.

We began by inviting all Local Authorities to a meeting chaired by our Custody Chief Officer to talk through the issues. This became the first of now regular quarterly meetings on 38(6) transfers, and laid the foundations for publication of the Local Authorities' accommodation protocol in January 2015. Importantly, the protocol sets out how transfers actually work at a local level: although the legislation sets clear expectations, it doesn't offer guidance on practical arrangements, such as which Local Authority the police should call, how transport is organised or how police and Local Authority staff communicate

effectively to ensure the child is placed in appropriate accommodation. The protocol fills this gap. It also includes an escalation procedure, which guarantees that senior staff are aware of accommodation requests and their outcomes. Having these kind of clear local arrangements in place is the first step towards ensuring that all transfers happen as they should.

Of course, there was still the challenge of making sure the protocol was being properly implemented on the ground. Every morning, I check the local custody management system for remanded children, and email the relevant custody officers asking for an explanation as to why they haven't been transferred. If it looks like there has been a problem on the Local Authorities side, I immediately get in touch with them to chase up what's happened. At first this needed a lot of attention and took up to 20% of my time, but got easier as good practice became more entrenched. We monitor progress with monthly performance reports on accommodation obtained, which go to senior officers at GMP, managers at the Local Authorities, safeguarding boards and the Police and Crime Commissioner. The fact that the PCC takes an interest in this has been very valuable: he has attended meetings and called me in to a PCC's public forum to explain our strategy, and this helps to ensure that the issue stays high on the agenda.

For the police, there are a number of challenges when trying to improve the transfer situation. Firstly, officers can find the legislation complex, so it helps to have one person tasked with taking responsibility for compliance. It also helps if that person has some seniority so they can manage these issues when trying to engage with staff remotely across multiple sites. Local Custody managers also have to be involved in challenging staff and driving improvement.

Secondly, the police will confuse the criteria for non-secure and secure accommodation. This in part emanates from their gut instinct to protect the public: police may not want to transfer a 15 year old, prolific burglar to a local foster carer –

but officers must operate in line with the law. This takes time and repeated challenge to get through to staff who may disregard the legislation believing they are doing it in the best interests of the public.

Local Authorities need to challenge officers who request secure accommodation to make sure this is really what's needed - it is their responsibility to fully understand the police request and the needs of the young person. When secure really is what's needed, it's important to push for it: secure accommodation is often available and with early planning can be obtained, especially if you have a facility nearby.

Finally, every Local Authority has to be engaged. There are so many instances where cross-border working is needed, so it's essential that everybody is on board and singing from the same hymn sheet. There's definitely more to do, but the work we've done at GMP is helping this to happen.

**GMP's recent HMIC National Child Protection Inspection Post-Inspection Review, published in December 2015, cited significant improvements in the force's procedures for transferring children out of custody. Most importantly, the force has seen a marked increase in the success rates of its 38(6) accommodation requests: by November 2015, up to 80% of transfer requests were accepted.**

# INSPECTION AND MONITORING



Ofsted inspects services that care for and provide services to children and young people including the inspection of Local Authority children’s services. Where Ofsted has concerns that a Local Authority is failing to meet its statutory obligations, including the requirement under Section 21 of the Children Act to accept children transferred from police custody under PACE 38(6), we will act on this information.

This concordat sets out principles that should assist Local Authorities in meeting their statutory duties. It lays the foundations for collaborative local arrangements between police forces and Local Authorities that are essential to ensure that children are transferred from police custody whenever the law requires.

Ofsted supports the key principles set out in this concordat and endorses the need for Local Authorities to improve in ensuring that no child is unlawfully detained in custody due to a failure to provide alternative accommodation.

HMIC independently assesses police forces’ efficiency, effectiveness and legitimacy in the public interest. Our inspection programme includes inspections of police custody facilities and child protection arrangements, both of which consider the transfer of children from police custody to Local Authority care under PACE 38(6).

This concordat lays out a clear protocol for police forces to meet their statutory obligations under PACE 38(6). It sets out the legislative requirements clearly and will help custody officers understand what is required of both them and their Local Authority colleagues.

HMIC supports the key principles set out in this concordat and endorses the need for police forces to improve in ensuring that no child is unlawfully detained in custody due to a failure to request appropriate Local Authority accommodation.

## Information Sharing Agreement

HMIC and Ofsted have an **information sharing agreement** in place. This includes a protocol for how the inspectorates will share information to assist each other in the exercise of their statutory functions.

Where HMIC encounters information that suggests a Local Authority is failing in its statutory responsibility to accept transfers from police custody, HMIC will alert Ofsted via the information sharing agreement.

Where Ofsted encounters information that suggests a police force is failing in its statutory responsibility to transfer children from police to Local Authority custody, Ofsted will alert HMIC via the information sharing agreement.

When receiving this information, each inspectorate will take appropriate action which most speedily supports the protection and appropriate care of children in custody.



Association of  
Independent  
LSCB Chairs



Every Local Authority area has a Local Safeguarding Children Board (LSCB). The LSCB is a statutory partnership with an Independent Chair whose role it is to hold local agencies to account for their safeguarding practice, policy and service delivery.

In the terms of this concordat LSCBs have an important role in holding to account all the relevant agencies to ensure that the Concordat is monitored and deviations in practice or service provision are advised to the Board. To achieve this LSCBs should ensure that they are sighted on all aspects of youth detention activity via performance data and qualitative information that details reasons for arrest and detention. All agencies are bound by Working Together to Safeguard Children 2015 and lack of resources is not an acceptable response for failing to do so.

A good example of where Police detentions in custody are overseen by the LSCB is in Cheshire, where there are four LSCBs covering the Cheshire Constabulary footprint. All decisions to detain a child overnight in custody are reviewed quarterly by a multi-agency panel chaired by an LSCB Board Manager to ensure that decision-making by key partners is correct and also that any 'blockages' are identified that may require a more strategic response, such as a lack of suitable accommodation, pressure on EDT response times etc. The Pan Cheshire LSCBs receive quarterly reports detailing the number of youth detentions, rationale and any deviations to the process outlined in this concordat.

For more information please contact the lead LSCB Board Manager which is currently Cheshire West and Chester - ***Sian.jones@cheshirewestandchester.gov.uk*** or the Head of Criminal Justice and Custody at Cheshire constabulary ***Peter.Crowcroft@Cheshire.pnn.police.uk***

Independent Custody Visitors (ICVs) make unannounced visits to police custody in order to check on the rights, entitlements and well being of detainees. ICVs will make recommendations for change and report their findings to Police and Crime Commissioners (PCCs), or similar bodies. In doing so, ICVs bring community intelligence and frequent oversight; and they deliver public reassurance.

The Independent Custody Visiting Association (ICVA) is an umbrella organisation that leads, supports and represents local custody visiting schemes. ICVA recognises the challenges in responding to the issue of children in custody and supports the principles of the concordat. ICVA and ICVs can bring a unique contribution to this work.

ICVA's National Standards, agreed with the Home Office and underpinned with bespoke training, enable ICVs to visit children in police custody. ICVA encourages ICVs to prioritise visits to detainees with vulnerabilities, notably children, when in custody. ICVs will speak with children in custody and check on their rights, entitlements and wellbeing. ICVs will be sensitive to complex vulnerabilities and will check for specialist requirements such as Appropriate Adult provision and access to easy read rights and entitlements. ICVs make immediate observations, questions and recommendations to staff and report to PCCs and senior police officers as required. ICVs record data on children in custody as part of their reporting. In doing so, ICVs collate crucial data and provide a critical safeguard that protects and monitors children in custody and can monitor the progress of the concordat.

ICVA is working with its members to collate and co-ordinate data and intelligence and will gather and evaluate national data in order to inform work with the National Preventive Mechanism and the Signatories and National Partners of the concordat.

ICVA also encourages schemes and PCCs to progress the concordat by using the findings of ICVs to inform partnership discussions and joint problem solving. PCCs are further able to escalate any local concerns they have by alerted inspection bodies such as HMIC and Ofsted.



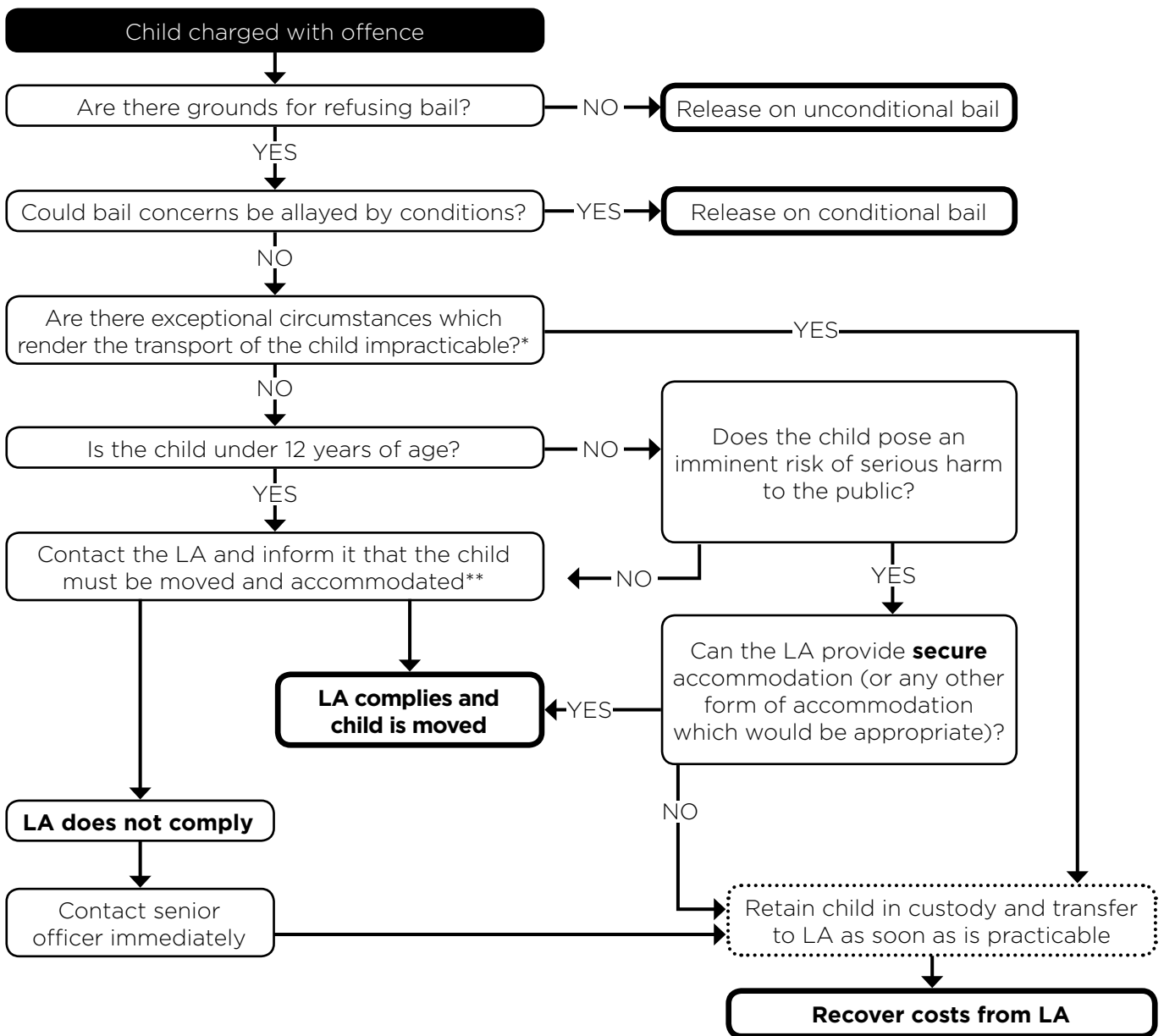


# ANNEX

ANNEX A

### Police process for children in custody

under section 38(6) of the Police and Criminal Evidence Act 1984



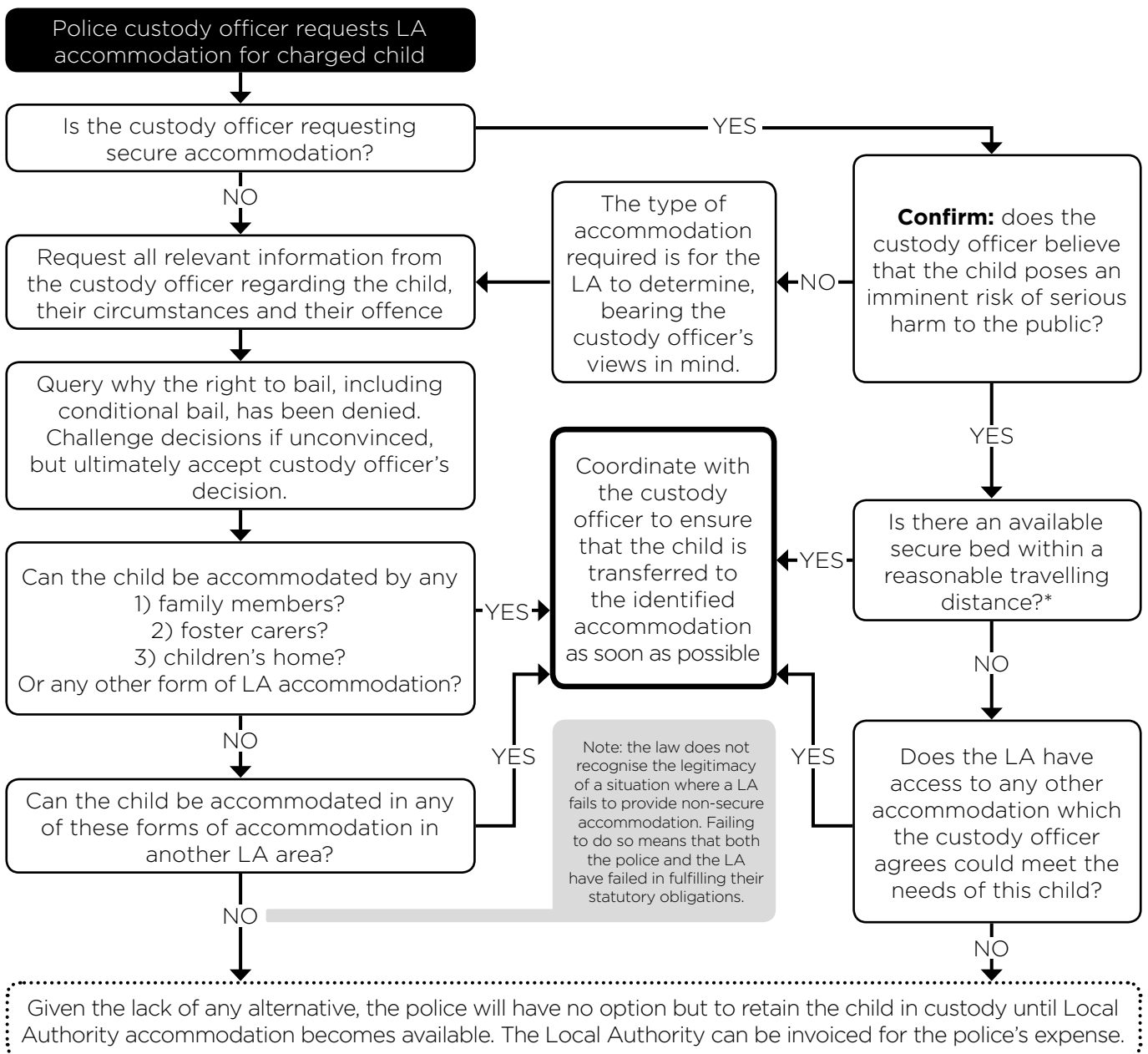
\* Circumstances which would render transfer impracticable do not include the availability of Local Authority accommodation, the nature of accommodation offered by the Local Authority, the child's behaviour, nature of offence, or the availability of transport.

\*\* Custody officers should ensure that the Local Authority is provided with all relevant information about the child and the offence for which they are charged, including reasons for the denial of bail.

ANNEX B

## Local Authority process for transfer of children from police custody

under section 21(2)(b) of the Children Act 1989



\* A reasonable travelling distance would be one which allows the child to be transferred without preventing them having a sensible amount of sleep in advance of their court appearance.

ANNEX C

### Child detained overnight in police custody

PACE 38(7) Certificate for Courts

Arrest Summons Number (ASN):

.....  
.....

Why was Local Authority accommodation not provided?

.....  
.....  
.....  
.....  
.....

What type of Local Authority accommodation was requested?

- Non-secure accommodation
- Secure accommodation
- None, as transfer was impracticable

Any other relevant details:

Explain why transfer was impracticable:

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Guidance on what constitutes lawful grounds for detaining a child overnight in police custody can be found on the reverse of this certificate.

If you have doubts as to whether this was a lawful detention, please flag this case to the relevant force for review, via the form at [www.surrey.police.uk/flag-detention](http://www.surrey.police.uk/flag-detention).

## Guidance

### on PACE 38(7) Certificate

Under section 38(6) of the Police and Criminal Evidence Act, a child who is charged with an offence and denied bail must be transferred from police to Local Authority custody, unless:

1. Transfer was **impracticable**, or
2. The child is over 12 years of age AND **required secure accommodation** but none was available

#### Impracticable transfer

In this context, the term 'impracticable' is often misunderstood. It does **not**:

- relate to the availability of Local Authority accommodation or transport;
- relate to the nature of the accommodation offered by the Local Authority;
- relate to the child's behaviour or the nature of the offence, or;
- mean 'difficult' or 'inconvenient'.

Rather, '**impracticable**' should be taken to mean that *exceptional circumstances render movement of the child impossible* or that the child is due at court in such a short space of time that transfer would deprive them of rest or cause them to miss a court appearance.

#### Secure accommodation

Secure accommodation can only be lawfully requested if the custody officer believes that the **child poses a risk of serious harm** to the public between being charged and appearing at court.

If secure accommodation was requested and was not available, then the police may

lawfully continue to detain the child. This is the case even if the Local Authority has failed to meet its statutory obligations.

#### Non-secure accommodation

Local Authorities have an **absolute duty to accept** requests for **non-secure accommodation**. There is no lawful reason to refuse these requests.

#### Online Flagging Mechanism

If the information provided on the PACE 38(6) Certificate for Courts suggests that there may have been failures by the police or Local Authorities to meet their statutory obligations, you may flag this to the responsible force for review via **www.surrey.police.uk/flag-detention**. This only requires the input of the case Arrest Summons Number (ASN). You may also use this mechanism to flag instances where no certificate has been provided.

This will bring the particular case to the responsible force's attention, allowing it to review whether failures took place and drive improvements in future.



## ANNEX D

### Children in Custody Online Flagging Mechanism

For quality assurance of a 38(6) certificate Section 38(7) of the Police and Criminal Evidence Act 1984 (PACE) requires police to provide courts with a certificate in instances where a child has not been transferred to Local Authority accommodation under PACE 38(6).

In the past, this certificate has served little purpose. PACE does not specify what information the certificate should include or what should be done in instances where police or Local Authorities appear to have failed to meet statutory requirements.

This concordat provides a standard template for the PACE 38(6) certificate. This template identifies the information most relevant to determining whether a child has been lawfully retained in police custody, or whether failures may have taken place.

If recipients of this certificate suspect that failures, on the part of the police force or the Local Authority, may have taken place, they are now able to bring these instances to the responsible police force's attention via an Online Flagging Mechanism, available at [www.surrey.police.uk/flag-detention](http://www.surrey.police.uk/flag-detention). This requires the input of the child's Arrest Summons Number (ASN), which is included in the certificate, and the selection of the relevant police force from a drop-down menu. This sends the ASN to a dedicated inbox at the force, thus allowing the force to review the case and investigate whether failures took place.

Over time, this mechanism may help forces to identify systemic issues. This will help to reduce the number of children detained unlawfully in police custody following charge and the resultant burden on courts to review 38(6) certificates.



