



MEMORANDUM OF UNDERSTANDING FOR THE PROVISION OF LOCAL AUTHORITY ACCOMMODATION FOR CHILDREN & YOUNG PEOPLE (10-17 years) FOLLOWING POLICE BAIL OR BEING DENIED BAIL

Document Version		
Version:	Date of Publication:	Date for Next Review:
1.0	December 2019	December 2022
1.1		

1.0 Aims

- 1.1 The aim of this memorandum of understanding 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.
- 1.2 The memorandum is intended to clarify the duties and responsibilities of agencies in the management of arrangements for the transfer to Local Authority Accommodation (LAA) of children and young people (aged 10 to 17 years) charged and denied police bail. It also provides some guidance for staff when a young person is unable to return to their accommodation when a family are victim's, parents refuse to have them return home or Police determine it is not safe for them to return home, due to the nature of their offence.
- 1.3 This memorandum should be read in conjunction with the Home Office Concordat on Children in Custody (October 2017). The Concordat clearly sets out each agencies' responsibilities.
- 1.4 The Concordat highlights that often local authority staff are not always aware of their absolute legal duty to provide accommodation and often believe that a lack of available space or accommodation justifies leaving a child in a custody cell. This memorandum therefore contains clear processes and procedures so staff are all aware of the requirements and expectations upon them, and aims to ensure they are undertaken in a timely and appropriate manner.

2.0 Scope

- 2.1 This memorandum applies to children and young people (aged 10 to 17 years) who have been charged with offences and refused bail or who cannot return home. It also provides some guidance for staff when a young person is unable to return to their accommodation.
- 2.2 This memorandum represents a voluntary agreement between the following organisations:
 - Wiltshire Police
 - Swindon Borough Council
 - Wiltshire Council

Between its signatories it is both an agreement of understanding and a declaration of commitment to ensure these duties are fulfilled.

- 2.4 There will be instances where a child resident in one Local Authority Area is held in a custody suite situated within another Local Authority area. The concordat outlines that a police force can contact any local authority with a request for secure or non-secure accommodation, but the most sensible choices would generally be:
 - The authority in which the police station is located
 - The authority in which the crime was committed
 - The authority in which the child is normally resident(M v Gateshead 2006).

NB: If the child is resident in either Swindon or Wiltshire the relevant Local Authority will take responsibility. If the

child is from out of area either bullet one or two would apply.

- 2.5 Wiltshire Police will collect regular data and share this with the local authorities and other relevant partners to inform effective working together relationships. This can then be reviewed against their own data. This will include:
- The number of children (under 18) who are charged and detained in police custody overnight with no request for any accommodation made by police to the local authority.
 - The number of requests made for secure accommodation
 - The number of transfers to local authority secure accommodation as a result of a request for secure accommodation
 - The number of requests made for non-secure accommodation
 - The number of transfers to local authority non-secure accommodation as a result of a request for non-secure accommodation.
 - Local Authority should record details of why any requests for accommodation are not successful and review within their own systems as to what happened and how it can be resolved.
- 2.6 The memorandum will be subject to regular review to ensure it is effective in meeting the key aims set out above.

3.0 Background

- 3.1 The law already recognises that police cells are not a suitable place for children and in 1991 the UK ratified the UN Convention on the Rights of the Child agreeing that custody should 'only be used as a measure of last resort and for the shortest period of time'. Children should not be spending the night in police cells when the law entitles them to be transferred to alternative accommodation. Children brought into custody are in a particularly vulnerable position. Legislation and inspections state that young people should spend the **minimum** amount of time detained as is necessary and should only be held overnight in a police station in **exceptional** circumstances.
- 3.2 A number of reports and inspections including HMIC (the welfare of vulnerable people in custody March 2015, HMIP (Who's looking out for the children? A joint inspection of Appropriate Adult provision and children in detention after charge December 2011), the Howard League for Penal Reforms (the overnight detention of children in police cells 2011) all have identified a number of failings, that in many cases the law is not being followed and children are not receiving the support to which the law entitles them.
- 3.3 Particular areas of concern included: the lack of local authority accommodation provision for children who had been charged and refused bail, resulting in children being detained in police custody unnecessarily; including a lack of data around the police's efforts to secure local authority accommodation for children, and it considered that in many cases the failure to comply with the law stemmed from confusion as to its requirements.
- 3.4 This memorandum, alongside the concordat, is therefore focused upon addressing these issues and ensuring locally proactive action is taken to uphold the legal requirements upon all involved.

4.0 Legal Context

- 4.1 Police forces have a duty under the Police and Criminal Evidence Act (PACE section 38 (6) 1984) to secure the transfer of the arrested child to Local Authority accommodation and Local Authorities have a duty to accept transfers and accommodate the child, under the Children Act 1989 (CA section 21 1989).

5.0 Principles and Practice

- 5.1 **Wherever possible, charged children will be released on bail.** After a child is charged there is a presumption they will be granted bail. Concerns which may lead to a refusal or restriction of bail must relate exclusively to the period between the child's release and their appearance at court. 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 bail. Consideration of conditions should be discussed with the Youth Offending Team (YOT) where possible.
- 5.2 **If a custody officer decides to refuse bail they must make a written record of the reasons for this refusal** as soon as possible and the court should scrutinise the decision to deny the child of their right to bail when they appear in court from either police custody or local authority accommodation.
- 5.3 **Children denied bail will be transferred wherever practicable.** After a child is charged with an offence custody officers have a duty under PACE to secure the transfer of the arrested child to local authority accommodation. Local authorities have a duty to accommodate the child.
- 5.4 **One of the circumstances where PACE allows police to retain a child in custody is where transfer is 'impracticable'.** In this context, the term impracticable has a very specific meaning and should be taken to mean that **exceptional circumstances** render the movement of the child impossible (i.e. snow, thick fog). This must be judged on a case by case basis and be cleared by a duty inspector. If it is considered impracticable to move the child a (child detained overnight in police custody certificate for courts Appendix C) must be completed. Impracticable **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
 - Mean difficult or inconvenient
- 5.5 **Local authorities will always accept requests for non-secure accommodation.** After a custody officer has decided to accept the child of the right to bail and has determined non-secure accommodation is appropriate they must contact the local authority to request accommodation for the child. The local authority should confirm the reasons why conditional bail is not possible to make an informed decision as to what type of accommodation is suitable.
- 5.6 **It is up to the local authority to determine the most appropriate type of non-secure accommodation for the child.** Where possible the most preferable alternative is to return the child to the care of family or friends, although an exception to this is where there are safeguarding concerns. The Local Authority will make the assessment and determine where is best for the young person to be transferred to. Other options include placements

with foster families or in a children's home. 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, ensure all risks are considered and the young person attends court.

- 5.7 Once a child is transferred to local authority staff by a police officer, they transfer the power to lawfully detain the child. At the point of transfer to the local authority, police responsibility for the child ceases entirely. It is important that local authority staff remain conscious of the level of responsibility this transfer places upon them. A custody officer has determined that the child must be held in lawful custody until their appearance at court and local authority staff are accountable for ensuring this lawful custody is upheld including the duty to transport the child to court. It is also important that the child understands if they abscond they are committing a serious offence of escaping lawful custody (Appendix D outlines what a police officer in the presence of local authority staff must explain to the child).
- 5.8 If the custody officer's request for non-secure accommodation is not met by the local authority they should contact the duty inspector immediately and escalate to a local authority Head of Service. Both parties shall ensure an accurate record of any escalation is kept.
- 5.9 **If Local Authority is unable to provide non-secure accommodation they need to clearly demonstrate that they have explored and exhausted all possible options to fulfil their statutory requirements. Should they be unable to provide non-secure accommodation** there may on occasion the ability for the police to recover costs at the standard Home Office rate from the Local Authority. This will be reviewed on a case by case basis.
- 5.10 **Secure accommodation will only be requested when necessary.** PACE is very clear for the police to justify the request of secure accommodation the child must be:
- 12 years or older
 - The custody officer must believe that other local authority accommodation would not be adequate to protect the public from serious harm between being charged and appearing at court. Risk of serious harm means they are likely to cause death or serious injury (whether physical or psychological).
- 5.11 **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.
- 5.12 **Under section 25 of the Children Act 1989 local authorities have minimum criteria that a child must meet to be placed in secure accommodation.** A child may only be lawfully detained in such accommodation if the local authority believes:
- They have a history of absconding and are likely to abscond from any other description of accommodation,
 - if they abscond they are likely to suffer significant harm, or
 - If they are kept in any other description of accommodation they are likely to injure themselves or others

- 5.13 If a situation arises where a local authority disagrees with a custody officers' assessment of risk and feels the local authority cannot lawfully meet the criteria for secure accommodation under the Children Act, this should be escalated to Head of Service level as quickly as possible. Please see escalation process below.

If the request for secure accommodation has been agreed (i.e. the local authority agrees the minimum criteria has been sufficiently met) the local authority must do everything within its power to find secure accommodation for the child.

6.0 Process

- 6.1 When a child or young person is refused bail, or it is determined they cannot return home immediate contact must be made with the Local Authority Children's Social Care Service during office hours and the Emergency Duty Service (EDS) if out of hours.

- 6.2 Steps that must be taken:

- Police to liaise with YOT prior to making decision to explore the use of conditions
- If police consider bail is refused, police to contact MASH directly stressing that action is required due to refusal of bail. Police must always ensure they proactively assess and contact MASH in all cases – even in cases where they assess risks and concerns to be high and are opposing bail. This is to enable a joint discussion to take place regarding the most appropriate next steps.
- MASH to contact the duty manager and stress the immediacy of the situation and then flag to the appropriate team and service manager (if the young person is already known).
- If YOT are aware of the situation they will also raise with the team manager and service manager directly.
- Messages should never be given to social workers in isolation to pass on or emailed and the situation should be raised with a manager at the earliest opportunity
- The duty manager needs to start identifying appropriate accommodation in consultation with the service manager. This can be done in liaison with the YOT Team leader who may be able to provide input in terms of risk assessments. Any requests to approve accommodation must be approved by the relevant Head of Service, so they need to be sighted on the situation at the earliest opportunity.
- The local authority can determine what type of accommodation is provided but must ensure it is provided. If accommodation is required children's social care to contact Children Service Buyers/ Placement Team by day as required. This needs to be escalated as appropriate with relevant service managers and HoS.
- If the young person requires a physical or mental health medical assessment or treatment, whilst detained, the police will ensure that it is provided, in line with current custody health care arrangements and the outcome of any assessment is to be shared.
- The Local Authority and Wiltshire 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 responsible Local Authority will arrange transport for the child or young person to the accommodation placement. The placement will receive the young person transported to the establishment and provide overnight accommodation. If there is an unreasonable delay in Local Authority transport the Duty Inspector must be informed to consider options such as transporting the child a

reasonable distance or assisting with the transport i.e. to support a lone EDS worker.

- The Police will complete and provide the placement provider with a copy of the form PER Form (Prisoner Escort Record), to provide relevant information to the placement.
- The Local Authority will make arrangements, appropriate to the accommodation arrangement put in place, to transport the child or young person to the next available court.

7.0 Monitoring and Review

- 7.1 This protocol shall be kept under regular review to ensure that it delivers its key aims, reducing to a minimum the numbers of children and young people detained in police custody.
- 7.2 Each Local Authority (SBC Service Manager Restorative Youth Service/ Wiltshire Service Manager Young People) and Police Authority (Head of Custody) should monitor the numbers of children and young people denied bail and the effectiveness of the protocol and reassure the LSCB/ SVPP (or delegated bodies) of the effectiveness of the services being provided.
- 7.3 Wiltshire Police will provide regular data reports on the numbers of children and young people detained by Police; those denied bail and those for whom accommodation is requested from the Local Authority. This data can be checked against the LA's own data to ensure accuracy. This data will support the monitoring arrangements put in place by the LSCBs to determine the effectiveness of this protocol in safeguarding children and young people.

8.0 Escalation Process


- 8.1 Should there be a need for escalation this needs to be appropriately and swiftly executed. Out of hours EDS will contact the on-call manager. During office hours escalation will go via Team Managers, Service Managers and Head of Service, Director as appropriate.

9.0 Authorisation

- 9.1 This memorandum has been authorised by each of the participating agencies as set out below.

Signed on behalf of Wiltshire Police:

Date: 03/12/19



Signed on behalf of Wiltshire Council:



Date: 28 January 2020

Signed on behalf of Swindon Borough Council:



Date: 12.12.2019

Appendices

Appendix A – Police process for children in custody

Appendix B – Local authority process for transfer of children from police custody

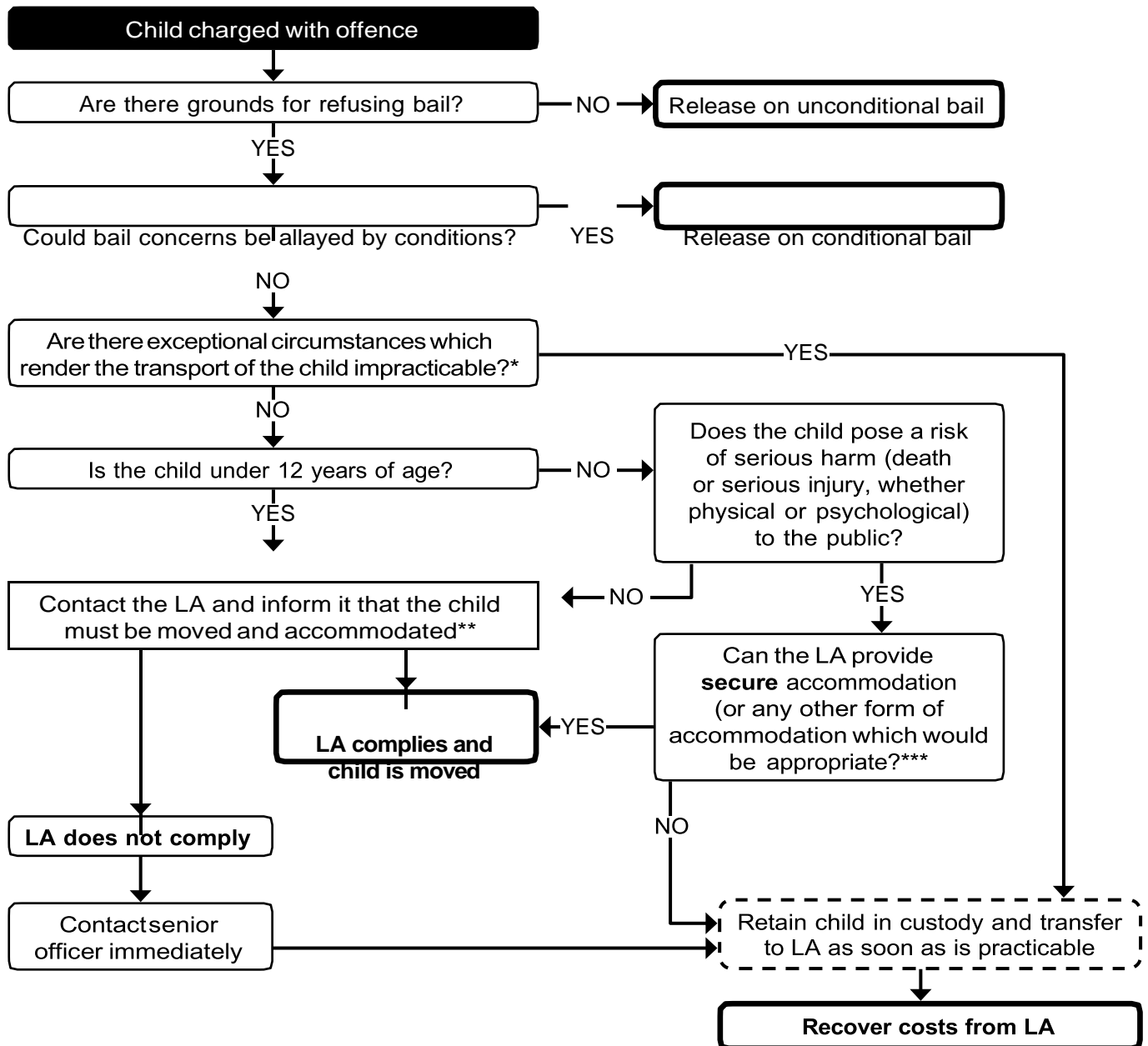
Appendix C - child detained overnight in police custody, certificate for courts

Appendix D – informing a child the nature of their detainment when handed over from Police to LA.

APPENDIX A

Police process for children in custody

PACE s.38(6)



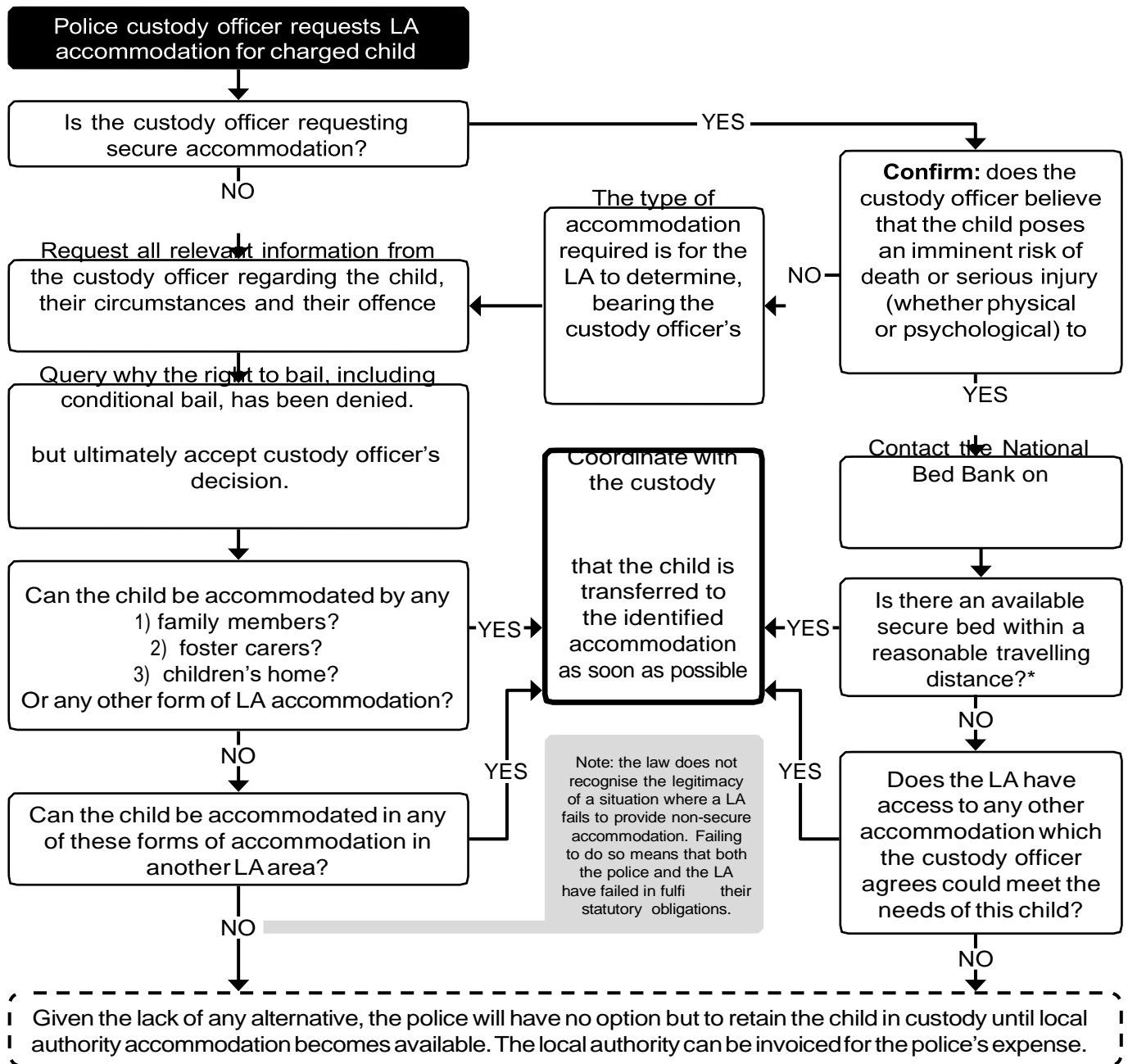
* Circumstances which would render transfer impracticable do not include the availability of LA accommodation, the nature of accommodation offered by the LA, the child's behaviour, nature of offence, or the availability of transport.

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

APPENDIX B

Local authority process for transfer of children from police custody

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



* 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.

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?	-----
<input type="checkbox"/> Non-secure accommodation	-----
<input type="checkbox"/> Secure accommodation	-----
<input type="checkbox"/> None, as transfer was impracticable	-----
Explain why transfer was impracticable:	Any other relevant details:
-----	-----
-----	-----
-----	-----
-----	-----
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<p>For court staff: Guidance on what constitutes lawful grounds for detaining a child overnight in police custody can be found on the reverse of this certificate.</p> <p>If you have doubts as to whether this was a lawful detention, please file this case to the relevant force for review, via the form at [HYPERLINK]. This involves submitting only the case ASN and will create no further work for the court.</p>	

Guidance

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' has a very specific meaning, which 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*.

Secure accommodation

Secure accommodation can only be lawfully requested if the custody officer believes that the child poses a risk of serious harm (i.e. death or serious injury) to the public between being charged and appearing at court.

If secure accommodation was requested and was not available, then the child's continuing detention in police custody was lawful.

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(7) 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 [\[HYPERLINK\]](#). This only requires the input of the case Arrest Summons Number (ASN), which is at the top of the certificate, and will create no further work for the court. If possible, 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.

APPENDIX D

Informing a child the nature of their detainment when handing over from Police to Local Authority.

When a child is transferred from the police to the local authority the police officer should – in the presence of the 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 you have to stay in custody until your court date. If you were an adult you would stay in 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 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 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?