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## Leicestershire

### **Protocol for the Provision of Local Authority Accommodation under Pace Detention Transfer - Leicester City, Leicestershire and Rutland**

**Applies to-**

**All children**

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## 1.0 Aims

- 1.1 The aim of this protocol is to safeguard children and young people through avoiding, so far as is practicable, their detention overnight in police custody following charge and the denial of bail.
- 1.2 The protocol is also 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.

## 2.0 Scope

- 2.1 This protocol applies to children and young people (aged 10 to 17 years) who have been charged with offences and refused bail. It does not apply to young people who are charged with breach of bail, breach of the peace or arrested on warrant. In some cases they may also have committed a new offence alongside a breach and under these circumstances they will remain in custody.

However good practice should prevail and local authorities should be contacted in consideration of the welfare of the child or young person.

- 2.2 This protocol represents a voluntary agreement between the following organisations:

- Leicestershire Police
- Leicestershire County
- Leicester City Council
- Rutland

- 2.3 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. To avoid confusion the Local Authority in whose area the child resides will be the **responsible authority**, but, in the first instance the custody suite where the child or young person is being held will contact the Local Authority for that locality.

- 2.4 The protocol will be subject to regular review to ensure it is effective in meeting the key aims set out above.

## 3.0 Background

- 3.1 Her Majesty's Inspectorate of Probation (HMIP) report 'Who's Looking Out for the Children' (2011) identified a number of significant safeguarding concerns relating to the experiences of children whilst in police detention. Local Authority Safeguarding Boards are responsible for overseeing the recommendations within this report. A key concern identified in the report is the overnight detention of children in police cells after police bail is denied, as opposed to transfer to accommodation provided by a Local Authority (LAA).
- 3.2 HMIP reiterated that Section 11 of the Children Act 2004, which "places a duty on key people and bodies to make arrangements to ensure their functions are discharged with regard to the need to safeguard and promote the welfare of children," applies equally to the police as it does to NHS bodies, local authorities and YOS. *Working Together to Safeguard Children* (2013) outlines how agencies should work together to safeguard and promote the welfare of children. This protocol sets out how this will be achieved for children and young people processed through police custody.

In conclusion, the HMIP report 'Who's Looking Out for Children' stated that: "...the children and young people who are processed through police custody are potentially the most vulnerable of the vulnerable, and the least able to represent their own best interests, control their behaviour, and communicate their needs."

ACPO have previously reported on this area of work & published a recommended checklist for Police Services. This commends the National Appropriate Adult Network flow chart for clear decision making. Both of these documents form appendices to this protocol.

This protocol has also been written with reference to *M v Gateshead* 2006 and draws on the protocol implemented within the Merseyside criminal justice area.

## 4.0 Legal Context

### 4.1 Police Powers to Refuse Bail

- 4.1.1 When the police decide they have sufficient evidence to charge a child or young person with an offence, they have a number of options (depending on the circumstances) and any final decision would be undertaken in consultation with the relevant Youth Offending Service (YOS).
- 4.1.2 Under the Bail Act 1976, there is a general presumption that bail will be granted without conditions but there are exceptions that apply to children and young people as well as adults. Section 38 of the Police and Criminal

Evidence Act (1984) (PACE) stipulates that, where the police charge a child or young person with an offence, the custody officer must decide whether to grant or refuse bail (with or without conditions).

4.1.3 PACE specifies that a person may be refused bail and continue to be detained following charge if the custody officer believes the person would:

- Fail to appear in court
- Commit further offences

Or it is necessary:

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

Additionally, for a child or young person:

- If the custody officer believes that they ought to be detained in their own interests.

4.1.4 Section 38 PACE (1984) details the requirements that a custody officer must consider before deciding to detain a person after he/she has been charged: Where a custody officer authorises an arrested **child or young person** to be kept in police detention under subsection (1), the custody officer shall **ensure that the arrested child or young person is moved to local authority accommodation unless he/she certifies -**

- (a) that, by reason of circumstances as are specified in the Juvenile Detention Certificate - Appendix B), it is impracticable for him to do so;

It is acknowledged that whilst thick fog/heavy snow/ no available beds within a reasonable distance may meet the implacability test, **a suspicion that he/she would abscond would not**. The accommodation referred to is not secure accommodation, which is only relevant to (4)(b) below.

The Local Authority has discretion as to the type of accommodation provided and Home Office Guidance states this is **not** a factor the custody officer is allowed to consider when deciding if the transfer is 'impracticable'.

- (b) in the case of an arrested juvenile who has attained the age of 12 years, no secure accommodation is available and that keeping him/her in other local authority accommodation would not be adequate to protect the public from **serious harm** from him/her.

(PACE) 1984 defines that '**serious harm for a juvenile** (charged with a violent or sexual offence) shall be construed as **death or serious injury, either physical or psychological**'.

- 4.1.5 In order to ensure compliance with PACE, a juvenile detention Certificate (annexe B) **will be completed in all cases where a juvenile remains in custody**. This shall be produced to the court before which they are first brought.

## 4.2 Local Authority Duty to Accommodate Child on Police Request When Grounds for this have been Jointly Agreed

- 4.2.1 Section 21 of the 1989 Children's Act directs that the Local Authority has a duty to accept the child or young person in response to a request from the police when the grounds are met. It is for the Local Authority to determine the type of accommodation provided i.e. family or friends, children's home, foster care **unless** the child has attained 12 years **and** it is necessary to protect the public from serious harm. Where the latter applies the Police shall request secure accommodation and ensure that the rationale for that request is clearly communicated to the Local Authority. This request should be made as soon as this possibility arises.
- 4.2.2 When a child or young person is refused bail, immediate contact must be made with the Local Authority Children's Social Care Service during office hours and the Social Care Emergency Duty Team out of hours when requesting appropriate accommodation as above.
- 4.2.3 The Custody Officer shall make a comprehensive detention log entry detailing to whom they spoke and the outcome, including the reasons why appropriate accommodation cannot be provided. A similar record of the discussions shall be kept by the Local Authority. A Juvenile detention certificate should be completed in anticipation of the court attendance.

## 5.0 Arrangements for transfer

- 5.1 During court opening hours, Monday to Friday, Police shall contact the court to establish if the young person will appear before the court closes.
- 5.2 If, within normal office hours (above), the court indicates that this will not be possible, the police should contact the Local Authority Social Care Team directly to request a transfer to local authority accommodation.
- 5.3 Outside normal office hours (above) all requests for transfer should be made to the relevant Out of Hours Team

- 5.4 The Police must nevertheless make arrangements to transfer the young person to local authority accommodation in **every** case unless:
- It is impracticable
  - There is a risk to the public of serious harm from that juvenile **and** no secure accommodation is available.
- 5.5 The lack of secure accommodation does not provide a justification for not transferring the young person to local authority accommodation **unless the young person is charged with a violent or sexual offence and** there is evidence of a risk of a further offence resulting in 'death or serious personal injury.' **In such cases, the police** shall consult with the relevant Out of Hours team who have indicated that secure accommodation cannot be made available otherwise a request for 'appropriate' accommodation should be made as in 4.2.1 and 4.2.2 above.
- 5.6 Should police make the decision **not** to transfer a young person to local authority accommodation, the reasons under the PACE Code (16.10) **shall** be clearly recorded on the form Juvenile Detention Certificate which must be sent by secure email to the local Office of the relevant YOS and presented to the court the next morning.
- 5.7 Police will contact the Local Authority or out of hours. Once notified, the Local Authority will in turn notify the responsible Local Authority for them to take responsibility for delivering the requirements of this protocol.
- 5.8 Where a young person originates from a local authority **outside** of LLR, the Local Authority or OOH local to the custody suite will be contacted by the Police for the LA to discuss the transfer with the young person's home authority. However, should the home authority not agree to that transfer, the responsibility remains with the local authority that has been requested to make the transfer to fulfil the obligations under PACE 38(6) to receive the young person.
- 5.9 If the young person requires medical assessment or treatment whilst detained the police will ensure that it is provided, in line with current custody health care arrangements.
- 5.10 The Local Authority and Leicestershire 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.
- 5.11 The responsible Local Authority will arrange transport for the child or young person to the accommodation placement however, the police will assist when necessary to do so. The placement will receive the young person transported

to the establishment and provide overnight accommodation. The police will also provide a copy of the local authority care certificate (appendix C)

- 5.12 The Police will complete and provide the placement provider with a copy of the Prisoner Escort Record, to provide relevant information to the placement.
- 5.13 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.
- 5.14 OOH must notify relevant YOS by email of all cases where the transfer to local authority accommodation did not take place and the rationale given by the police.

## 6.0 Escalation

- 6.1 It is acknowledged that on occasion there might be a disagreement between Local Authority social care staff and Police custody staff on how a child or young person should be dealt with under the protocol. If issues cannot be resolved either party can escalate to senior officers for review.
- 6.2 The Duty/Custody Inspector with responsibility for the custody suite where the child or young person is held shall perform this role for Leicestershire Police. An Assistant Director or Head of Service to Children's Social Care shall provide this function on behalf of the Local Authority.
- 6.3 Both parties shall ensure an accurate record of any escalation is maintained.
- 6.4 Where it is not possible to reach an agreement following escalation, matters shall be referred subsequently to the responsible LSCB.

## 7.0 Monitoring and Review

- 7.1 This protocol shall be kept under regular review to ensure that it delivers its key aims, in particular reducing to a minimum the numbers of children and young people detained in police custody overnight (as defined as any 4 hour period 10pm to 6am).
- 7.2 Local Authority Safeguarding Boards have a key role to play in monitoring the numbers of children and young people refused bail and the effectiveness of this protocol in meeting their needs.
- 7.3 Leicestershire Police will provide regular data reports on the numbers of children and young people detained by police, those refused bail and those for whom accommodation is requested from the Local Authority. 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 Authorisation

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

Signed on behalf of Leicestershire County Council

Date.....

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Signed on behalf of Leicester City Council

Date .....

.....  
Signed on behalf of Rutland Council

Date .....

.....  
Signed on behalf of Leicestershire Police

Date.....

## Appendices

Appendix A – NAAN flow chart for PACE beds

Appendix B – Juvenile Detention certificate

Appendix C – Local Authority Care certificate