

Draft Guidance: Accommodation Requests for Young People in Police custody

1. Synopsis

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

This guidance applies to young people (YP) under the age of 17 years for whom the Police seek accommodation from Children's Services subsequent to their arrest and detention at a Police station, but prior to formal remand from the Courts.

2. Context

The Police have the power to detain anyone under arrest for up to 24 hours (longer in certain circumstances) while an offence is investigated. By the end of this period they must release or charge the detained person. During this period of detention the Police can bail the suspect to return to the Police station at a future date, while investigations continue.

However, where the offence involves someone under the age of 18, if the Police wish to refuse bail they have a responsibility to consider transfers to Local Authority accommodation prior to appearance in court.

This guidance is designed to ensure that professionals are clear about the process for considering such requests. It is primarily targeted at duty social workers for both during the day and out of hours.

3. Circumstances when police may ask for accommodation

Police may ask for accommodation in two circumstances:

- In situations where they would be prepared to grant bail, but there is nowhere suitable for the YP to return to (for example where a parent refuses to allow a young person to return home or the young person assaulted a parent, and cannot return to the parent's care)
- In situations where because of the risks of the case, the Custody Sergeant does not feel that they should grant bail, and wishes the Local Authority to provide or access more appropriate accommodation.

4. How the Local Authority should respond to the above situations

When responding to all accommodation requests from the police the Local Authority should firstly establish why the police are unwilling to allow the young person to return

home and whether the police have explored if other family members and friends could provide accommodation.

4.1. Requests for a young a person to be accommodated: S.20 Children Act 1989

In the first situation, this is a request for accommodation under S.20 Children Act and this should be assessed by the Local Authority in the same way as any other S.20 request.

When considering what is the most appropriate placement for a child who is accommodated in the above circumstances, the Local Authority should consider:

- The individual needs of the young person and accommodation should be provided which matches the young person's needs.
- The need to transport and facilitate the child's attendance at court on the required date

As in all cases where requests are made to accommodate a young person, the Local Authority's first preference should be to return the child to the care of their family when and if this is considered a safe enough option. In considering this option it should be noted that the Local Authority may have available access to additional support processes or skills which will facilitate the safe return of a young person to the care of a parent who has previously informed the Police of their refusal to allow the young person to return home.

If it is not possible for the young person to return home then consideration should be given to a range of placement options inclusive of a foster placement, a placement in residential children's home, a placement with an extended member of the family and where assessed as being appropriate, a placement in supported 16+ accommodation. In deciding which is the most appropriate placement for the young person the Local Authority will need to be mindful of the need for the young person to appear in court on the required date which will usually be the day after discharge from Police Custody.

It should be noted as per S.20 of the Children Act that a young person cannot be accommodated if those with parental responsibility object and refuse to give such consent.

When a decision is made to accommodate any young person each Local Authority should follow their own individual Looked after Children Procedures

4.2. Requests for Transfer to Accommodation Section38 (6) of Police and Criminal Evidence Act 1984

In the second situation, this is a request for, "transfer to accommodation" under s38(6) of PACE which states that the '*Custody Officer shall....make arrangements for the arrested Juvenile to be placed into the care of a local authority and detained by the authority; and it shall be lawful to detain him in pursuance of the arrangements*'. Under the terms of PACE regulations during the period the young period is placed in transfer accommodation, they are regarded as under arrest, it restricts the young person's liberty and they may be detained in that accommodation:

When assessing which *transfer accommodation* should be made available to the young person the placement option described in paragraph 4.1 apply.

5. Requests for Transfer Accommodation to a Secure Residential Children's Home Welfare

The police can request a transfer to secure welfare accommodation. However, the local authority does not have to provide secure accommodation and if it cannot (or does not accept the need) then the young person must still be transferred unless serious harm to the public would occur.

Requests for secure accommodation are in effect a request to place a child in a Secure Children's Home under the terms of the Welfare Criteria of S.25 of the Children Act.

Therefore in responding to such requests the Local Authority must be assured that the secure welfare criteria as described below are met –

- The child has a history of absconding and is likely to abscond from any other description of accommodation; and
- If the child absconds, (s)he is likely to suffer Significant Harm; or
- If the child is kept in any other description of accommodation (s)he is likely to injure her/himself or others.
- This is modified if the child is charged or is convicted of a violent or sexual offence or an offence punishable in the case of person aged 21 or over by imprisonment of 14 years or more or has a recent history of absconding while remanded in Local Authority accommodation and is charged or convicted of an imprisonable offence or found to have committed whilst on remand
- The modified criteria in these cases is that children may not be placed or kept in secure accommodation unless it appears that any accommodation other than that provided for the purpose of restricting liberty is inappropriate because:
 - (a) The child is likely to abscond from such accommodation; or
 - (b) The child is likely to injure himself or other people if s/he is kept in any such accommodation
- An application to the Secretary of State needs to be made for a child under the age of 13
- Where placements are to exceed 72 hours the Local Authority must seek the authority of the court

5.2 In responding to such requests the Local Authority should follow their own individual secure welfare placement procedure. However a child should not be placed in secure accommodation unless the welfare criteria are met. It is also the case that all

alternative placements options, such as a placement in a children's home or with a foster carer, should always be considered and where such placements might reasonably be expected to reduce any presenting risks such placements should be used.

Where a child is kept in secure accommodation in a children's home and the local authority intends to make an application to the court to keep the child there, the local authority looking after the child must, if practicable, inform the following as soon as possible:

- The parents
- Any other person with parental responsibility
- The child's independent visitor if one has been appointed
- Any other person they consider should be informed of that intention

6. PACE accommodation for children from other areas

6.2 Case law has clarified that the Police may approach any Local Authority to request PACE accommodation or transfer and it becomes the responsibility of the chosen Local Authority to meet this request. However the usual practice should be that the police will be expected to refer the young person to the Local Authority where the young person is ordinarily resident.

6.3 The exception to this is where the police request a placement for a young person whose ordinary residence is geographically distant from the Police Custody suite where the young person is being held. In these circumstances it may not be in the interest of the young person to be transported to a distant area (possibly out of hours) and the logistical arrangements associated with arranging the transport of the young person may be prohibitive and impractical. Therefore in circumstances where the young person who requires a PACE placement ordinarily resides in a distant Local Authority the police should contact the Local Authority where the young person is detained. It will be the responsibility of that Local Authority to provide the PACE placement. In such circumstances the Local Authority which processes the referral will seek to recoup all associated administrative management and placement costs.

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