

# <sup>1</sup>Police and Criminal Evidence Act (PACE) Transfer Guidance v3

September 2013

## 1. Accommodation requests for Young people in Police custody

This guidance applies to young people (YP) under the ages of 18 for whom 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.

### 1.1 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 an absolute responsibility to consider transfers to Local Authority accommodation prior to appearance in Court. Depending on the circumstances of the case, this may include asking that the YP be accommodated in secure accommodation.

The Court of Appeal in **R (M) v Gateshead Council [2006] EWCA Civ 221** has indicated that where Local Authorities have a system to deal with such requests from Police, they have discretion about when it is appropriate to provide secure accommodation.

This guidance is designed to ensure people 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, and for Police Custody Staff.

### 1.2 Young people granted bail prior to charge and post charge

Police may ask for accommodation in two circumstances.

1. In situations where they would be prepared to grant bail, but there is nowhere suitable for the YP to return to (for example, a YP who has assaulted a parent, who cannot then return to that parent's care)

---

<sup>1</sup> Endorsed by ISCB September 2013

2. 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.

In the first situation, this is a request for accommodation under S.20 Children's Act 1989 and should be assessed by the Social Worker (SW) involved in the same way as any other S.20 request. Efforts should be made by the SW to return YP home with family, relatives and friends first, if it is safe to do so. See section 3 for more details.

In the second situation, this is a request for transfer to accommodation under s38 of PACE. Such accommodation may or may not be welfare 'secure' depending on the needs of the YP. During the period the YP is in accommodation, they are regarded as under arrest, and may be detained in that accommodation<sup>2</sup> under PACE s38 (6)<sup>1</sup>, or if they meet the criteria for S.25 of the Children's Act, they may be detained in a secure children's home. The Social Worker involved will therefore need to consider this situation further in the manner detailed below.

## **2. Considering requests for accommodation where the Police refuse bail**

### **2.1 Understanding the background to the request**

Firstly, it is important to understand the basis on which the Custody Officer should decide whether to grant bail.

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
- the person would commit further offences
- it is necessary for their own protection
- it is necessary to prevent harm to others
- it is necessary to prevent interference with justice/investigation, or
- there is doubt about their identity/name & address.

There is an additional reason for a child or YP to be detained:

- if the Custody Officer believes that he ought to be detained in his own interests.

***It is useful to ask the Custody Officer to clarify why bail is being refused, as it is possible that once challenged the Officer may review their decision and decide that bail is appropriate, and either release the YP to their own address or ask Social Services to accommodate under S.20 of the Children's Act.***

---

<sup>1</sup> PACE s38(6)...the Custody Officer shall...make arrangements for the arrested Juvenile to be taken 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.'

***If the Custody Sergeant is refusing bail, having arrested the YP on a warrant for failure to surrender to bail, or for breach of bail conditions, in these cases the Police may detain the YP overnight at the Police station for appearance at the next available court. (as s38 of PACE does not apply).***

Secondly, if the Custody Officer is refusing bail and wishes to transfer the YP to secure accommodation under s38 of PACE, the issue becomes what sort of accommodation is being requested, whether such accommodation is available, and whether it is practical to take the YP to that accommodation.

The options available are ***either*** to offer accommodation with Foster Carers, at children's home ***or*** to consider secure accommodation.

So, in the after clarifying why bail has been refused, the Duty Social Worker should explore what sort of accommodation is being requested and why.

## **2.2 Understanding the difference between 'PACE' transfer requirements and 'Secure' Accommodation in children's homes under S.25 of the Children's Act.**

As explained in the introduction, it is possible to detain a YP at accommodation provided by the Local Authority under s38 (6) of PACE. However, it is only possible to detain a YP in most secure children's homes<sup>3</sup> if that YP meets the criteria for S.25 of the Children's Act.

If the Custody Officer is requesting secure accommodation only, the SW will need to consider whether the 'Welfare Criteria' of S.25 of the Children's Act are met.

The 'welfare' criteria are that:

- a) The YP has a history of absconding and is likely to abscond from any other description of accommodation; and
  - (i) If the YP absconds, s/he is likely to suffer **Significant Harm**; or
  - (ii) If the YP is kept in any other description of accommodation s/he is likely to injure her/himself or others.

The use of secure accommodation should be for the minimum period necessary, following an assessment of likely risk to the child, others and public safety  
S.25 (1).

### **Considering the criteria in more detail**

*That the YP has a history of absconding:-* if the YP doesn't have such a history, secure accommodation cannot be provided under S.25. It is important to remember that not turning up for Court, or school is not the same as absconding from accommodation.

---

<sup>3</sup> In the north west of England, the National Youth Justice Board (NYJB) separately commission beds in secure children's homes specifically to meet the need for PACE transfers – access to such beds are controlled via the NYJB – see appendix for contact details

In addition to having a history of absconding, there must:

- a) Either be evidence that they would be likely to abscond again and in doing so would suffer significant harm
- b) Or evidence that without secure accommodation, they would be likely to hurt themselves or others.

These are high thresholds. Likelihood of future harm needs to link back to past evidence - this might for example include having prostituting themselves, or placed themselves in other risky situations. Similarly, evidence for point 'B' may include past episodes of serious self harm, or hurting other people.

The Police cannot authorise welfare secure; in an emergency it can be authorised by the Director of Child Protection for up to 72 hours and anything longer would have to be ordered by the Courts. Out of hours authority can be given via the on-call senior manager. Those in Police custody who are placed in secure accommodation pending court are not considered Looked After.

In many cases, the young person won't meet these criteria, so the question would be whether the Custody Sargent is willing to release the YP to care that is available.

Other Issues to consider as part of decision making:

- **The length of time before the YP is to appear in Court**, and time taken to reach an available placement. There are few secure units in South East England (see appendix), and suitable foster care is hard to source in an emergency and it is unlikely to be in the YP's interests to spend most of the intervening time in a Police car rather than asleep at a Police station.
- **The potential vulnerability of the YP.** The EDT SW should assess the YP's state of mind and any potential emotional vulnerability the YP may experience while in Police custody. S/he should take account of the views where appropriate of the custody officer, officer in the case, custody nurse/FME, legal representative, appropriate adult and parent/carer. If any doubt exists the SW should see the YP at the Police station to form their own view.
- In general, **the younger the YP, or the longer the period before Court, the more likely it would be that a transfer** to accommodation should be arranged to avoid detention in Police custody.
- The wishes and feelings of the YP.

If the SW assesses that a transfer to secure accommodation or foster care could be appropriate, they should:

- Contact the Service Manager/ Duty Service Manager for permission to proceed with transfer.
- Contacting secure accommodation/ in-house Foster Care/independent Foster Care (as appropriate) within a 3 hrs. radius of Islington to ascertain whether there are vacancies (see appendix for contact details) willing to accept the YP.
- Consideration should be given to the needs of the YP, however where little is known about the YP, the SW should ensure that a prospective placement does not place other young people or carers at risk.
- If a vacancy is available, confirm with the Custody Sargent that they are happy to transport and if yes confirm the placement with the provider.

### **3. Transfers to Local Authority Accommodation under s20 of the Children's Act**

As specified in the introduction, there are situations where the Police would be willing to grant bail, but are unwilling or unable to agree that the YP return to their home address.

In these situations, the Duty SW should first establish why the Police are unwilling to allow the YP to return home, and whether other family members or friends would provide a suitable alternative care, and the views of those with parental responsibility<sup>4</sup>. As in other cases where requests are made to accommodate a child, the preference should be to return them to the care of their family if this is a safe enough option.

A short report should be prepared to give to the foster carer, detailing background information about the case, any bail restrictions that may be imposed, and details of when the Young Person should be returned to court.

### **4. Role of the Duty SW where a transfer to secure/other accommodation isn't possible**

If (in exceptional circumstances) we are not able to fulfil our duty to provide accommodation and the YP needs to remain in custody EDT should ensure an assessment is completed on the vulnerability of the YP. This is particularly important if the YP will be in custody more than 24 hrs. before appearing in Court.

### **5. Other Matters: non-Islington residents**

Case law has clarified that the Police may approach any Local Authority to request a PACE transfer. It becomes the responsibility of the Local Authority chosen, to meet the request, and is not dependent on the home address or the current location of the YP.

Whilst it makes sense to expect the Home Local Authority to deal with YP from their area, if they are not able or willing to respond, the request to transfer rests with the Local Authority receiving the original request. In such cases due consideration should be given to the best interests of the YP. Therefore, requests from Police relating to non-Islington YP may need to be dealt with on a case by case basis, with Islington's position being that we will deal with these only if absolutely necessary and will seek to recoup the costs from the Home Local Authority.

---

<sup>4</sup> Under S.20 of the Children's Act accommodation cannot be provided if those with parental responsibility object.

## **Appendix1: Information**

### **Secure Accommodation within 3 hrs. of Islington**

Information is available via the Secure Children's Home Network – which can be found at [www.securechildrenshomes.org.uk](http://www.securechildrenshomes.org.uk)

There are 17 secure children's homes in England. You can find out about available beds by calling The National Bed Bank which is run by the Youth Justice Board. Their out of hours phone number is 0845 3633 6383.

The most local secure Children's homes are:-

**Leverton Hall, Brentwood, Essex CM14 5LL no 01277 233588**

**Beechfield Secure Unit, Corpthorne, West Sussex RH10 3H2 01342 712309**

**Lansdowne –Hailsham, East Sussex BN27 1NP 01323 466270**

**Clare Lodge Secure Unit, Peterborough PE6 7LU 01733253246 (female only)**

At the point of writing, these units would only take a Young Person who met the criteria for s25 of The Childrens Act, (so general 'PACE' transfers not meeting welfare criteria would not be considered.)

To follow:

- **Foster Agencies willing to take a YP under PACE or bailed to appear in Court.**
- **Flow Chart**