

Greater Manchester Local Authorities and Greater Manchester Police

**Joint Protocol for considering requests for the provision of accommodation
under PACE (Police and Criminal Evidence Act 1984)**

Implementation (Version November 2021)

1. Introduction

- 1.1 This guidance applies to children between the ages of 10 and up to (and including) 17-year olds for whom the Police seek accommodation from Children's Services subsequent to their refusal of bail at a Police station, but prior to their appearance at Court.
- 1.2 The primary aim of this protocol is to safeguard children through avoiding, as far as is practicable, their detention overnight in Police custody. All staff should also be aware of the GM-wide LA commission for Appropriate Adults via *Child Action North West (CANW) and that CANW will liaise with the LA to both obtain and provide information relating to a child. In addition the GM Integrated Health Liaison and Diversion Partnership (IHLDP) is contracted through the Mayor's Office (GMCA) to offer a health care assessment through a qualified health practitioner and Liaison and Diversion assessment to all detained children which may further justify communication being shared between the LA and the health care provider in the pursuit of safeguarding and the best interests of the child or young person.
- * In some authorities the Youth Justice Service have retained the AA function during weekday working hours. The local primary Custody Suite and relevant partners for that area will be aware of this.
- 1.3 Children who are processed through Police custody include amongst their number some of the most vulnerable in our communities: those least able to represent their own best interests, control their behaviour and communicate their needs. One of the key principles underpinning this protocol is that every effort will be made, at all times, to prevent the need to use its provisions by establishing effective systems between Greater Manchester Police and the 10 Local Authorities of Greater Manchester.
- 1.4 Throughout this time, the Police must observe the National Strategy for the Policing of Children and Young People: "It is crucial that in all encounters with the police those below the age of 18 should be treated as children first. All officers must have regard to their safety, welfare and well-being as required under S10 and S11 of the Children Act 2004 and the United Nations Convention on the Rights of the Child."

S11 of the Children Act 2004 states that when police officers are discharging their duties, they must ensure that *“Their functions are discharged having regard to the need to safeguard and promote the welfare of children”*

- 1.5 Children should not be kept in Police custody following charge (for an offence) and if they cannot go straight to court, they must normally be transferred to Local Authority accommodation. In these circumstances it is for the Local Authority to determine what sort of accommodation is suitable. The only exception is where the child is assessed as likely to cause serious physical or psychological injury to a member of the public before they appear at court, in which case a request should be made for the provision of secure accommodation.
- 1.6 There is a presumption in favour of bail. s38(1) of PACE states that the custody officer shall order the release of a detained child after charge unless one of the following exceptions apply:
 - (I) Their name or address cannot be confirmed
 - (II) Their detention is necessary for their own protection or to prevent physical injury to another or to prevent loss of/damage to property
 - (III) There are reasonable grounds to believe the person will fail to attend court or that detention is necessary to prevent interference with the administration of justice or with the investigation of offences
 - (IV) Their detention is in their own interests

In addition, s63B of PACE permits detention after charge for the taking of a sample.

Unless exceptional circumstances apply, bail will also be refused for anyone charged with homicide, rape or related offences who has previously been sentenced to detention for any offence listed in section 25(2) Criminal Justice and Public Order Act (CJPOA) 1994.

s38 PACE does not apply to children arrested for breach of bail under s7 Bail Act 1976 or on a warrant under s13 Magistrates Court Act 1980. However, it does apply if the child has been charged with another offence and is not solely in custody for breach of bail.

2. Context

- 2.1 When the Police determine they have sufficient evidence to charge a child or young person with an offence, they have a number of options (post-charge) and any final decision should normally be taken after consultation with the relevant Local Authority.
- 2.2 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 release the suspect while investigations continue.

2.3 Section 38(6) Police and Criminal Evidence (PACE) Act 1984 places a duty on the Police to transfer children who have been refused bail to local authority accommodation rather than keeping them in the police station overnight. The two exceptions to this are:

- I. Where the custody sergeant certifies that it is *'impracticable' to move the child to local authority accommodation; or
- II. The child has attained the age of 12 and no secure accommodation is available and keeping the child in non-secure local authority accommodation such as emergency foster care, a children's home or staying with family members would not be adequate to protect the public from serious harm from the child.

*'impracticable to transfer', 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' however revisions to PACE Code C in 2018 now includes the fact that transfer need not occur:

- I. if exceptional circumstances render movement of the young person impossible or
- II. if the young person 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.

The issue of impracticality should be supported by the Duty Inspector and detail of the travel and court times should be recorded in the certificate of detention. Impracticality must be judged on a case by case basis rather than a time " cut-off ".

2.4 This guidance is designed to ensure that professionals are clear about the process for considering such requests. It is primarily targeted at Custody Officers, Duty Social Workers and Youth Justice Officers for both during the day and out of hours.

3. The provision of accommodation

3.1 Police may ask for accommodation in two circumstances:

- i) In situations where they would be prepared to grant bail, but there is nowhere suitable for the young person 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)
- ii) 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.

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 whether other family members and friends could provide accommodation.

- 3.2 Section 21(2)(b) Children Act 1989 places a corresponding duty on local authorities to provide accommodation when they are requested to under section 38(6) PACE 1984. 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.
- 3.3 It should be noted that under S.20 of the Children Act 1989, a young person cannot be accommodated if those with parental responsibility object and refuse to give such consent. If this happens, the Local Authority should contact the custody sergeant and jointly re-assess the situation.
- 3.4 When a decision is made to accommodate any young person each Local Authority should follow their own individual Safeguarding Looked after/Cared for Children procedures
- 3.5 The second situation set out above is 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 person 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.
- 3.6 It is for the Local Authority to determine what type of accommodation is sought for the young person. In some circumstances, following assessment, a placement within the family will be considered appropriate; for others supported residential or foster care or 16+ accommodation will provide the necessary care and supervision. In deciding the most appropriate placement for the young person, the Local Authority will need to be mindful that the young person must appear in court at the required date, which will usually be the day after discharge from Police custody.
- 3.7 The 10 GM Local Authorities currently have a GM-Commissioned s.38 bed at DePaul Trust, Burnage, Manchester, which will take GM referrals for 16/17-year olds. All OOH/EDT services have details of the referral procedure.
- 3.7 Once a child is transferred to Local Authority Accommodation, the duties in relation to the child also transfer to the Local Authority under section 39(4) PACE. This includes the production of the child at the first available court sitting¹,

detention of the child under s.38(6B) PACE 1984 (if the child runs away they can be charged with escape from lawful custody) and placement of the child at the most suitable address. This means that the Local Authority can choose to return the child to their home address even if this had not been considered viable for conditional bail. At the other end of the spectrum it can also result in the child being placed at a secure children's home if the criteria of s25 Children Act 1989 are met, even when the police have not requested secure accommodation.

- 3.7 The Police must make arrangements to transfer the young person to local authority accommodation in every case, unless it is impracticable or there is a risk to the public of serious harm from the young person AND no secure accommodation is available. The Police may not refuse to transfer a young person simply because they disagree with the local authority as to the suitability of the resource.

4. Requests for Transfer to a Secure Children's Home

- 4.1 The Police may request a transfer to secure 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 to other accommodation unless serious harm to the public would occur.

- 4.2 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 1989. 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 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

4.3 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 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.

4.4 Where a child is kept in a secure 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.

5. Transfers under PACE

5.1 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. This protocol sets out arrangements agreed between the 10 Greater Manchester Local Authorities (LA) and Greater Manchester Police (GMP) designed to both maximise responsiveness (e.g. with respect to Appropriate Adult services) and to ensure that the LA in which the child is normally resident is engaged in decision-making. It also clarifies expectations in respect of children from outside the Greater Manchester area.

5.2 When considering the possibility of requesting accommodation under PACE, the Custody Sergeant will contact the Local Authority in which the child resides. Where a child is of No Fixed Abode the Local Authority where the custody suite is situated will be contacted and asked to provide accommodation. It is the duty of the LA to ensure that contact details are kept up to date and provided to GMP. Out of Hours/Emergency Duty Team contact arrangements (including a local definition of the hours covered by this service) will also be provided to GMP.

- 5.3 Each LA with a custody suite in their area will keep a current set of contact arrangements – both daytime and out-of-hours - for each of the other 9 GM LAs. It is the duty of each LA to ensure that these are updated should they change. LAs will also provide details of any PACE resources they will make available to accommodate children from their LA and indicate whether these might also be available for use by other LAs.
- 5.4 When contacted by the Custody Sergeant, the LA will make any immediate arrangements necessary to respond to the child's needs.
- 5.5 In normal circumstances, once appropriate accommodation has been identified by the LA, GMP will transfer the child from the custody suite to the accommodation. The LA will ensure that it has made appropriate arrangements to transfer the child to court the following day.
- 5.6 When the Police request a placement for a young person whose ordinary residence is outside Greater Manchester it may not be in the interests of the child to be transported to a distant area (possibly out of hours) and the logistical arrangements associated with arranging the transport of the child may be prohibitive and impractical. In these circumstances the LA in which the child is being held will liaise with their "home" authority and agree whether a transfer to that area or seeking a local (GM) solution is most appropriate. In such circumstances the Local Authority which processes the referral will seek to recoup all associated administrative management and placement costs.

6. Problem Solving and System Learning

- 6.1 GMP will identify a senior officer with responsibility for overseeing the implementation of this protocol. Each LA will identify a senior officer to act as a contact point for the GMP lead. The designated senior officers will act as a reference point should operational staff be unable to reach agreement on the management of a case – in effect they will provide the first level of escalation. In addition, the GMP lead will provide each LA with details of requests made that did not lead to the provision of accommodation and the LA will use this communication channel to raise issues relating to children for whom a transfer was not sought.
- 6.2 GMP will provide regular data reports on the numbers of children detained by the Police; those denied bail; and those for whom accommodation is requested from the LA and whether it was provided.
- 6.3 The operation of this protocol will be reviewed, as required, by GMP and the 10 GM LAs when operating procedures change significantly or revised guidance/legislation changes.

6 Escalation Procedure

7.1 If the LA does not offer a placement this is *also* to be escalated by GMP to the Emergency Duty Team/Out of Hours Leads who will provide a written response *or contribute to a mutually agreed scrutiny function*, in conjunction with their Youth

Justice nominated lead, that details the reason for this decision-making and outcome. Cases may subsequently require notification to the Director of Children's Services (or nominated equivalent) . Heads of the Youth Justice Services will be provided with monthly data regarding detention and accommodation requests and will support GMP in any necessary escalations *and vice-versa*. *GMP will also invoke their own internal scrutiny function to ensure that police processes have been followed accordingly and provide feedback, learning and training to custody suites/individual officers where this is not the case.*

* See Appendix 3

Appendix 1

Information that will be provided to the carer by the Police and Local Authority (where a child has been provided with Local Authority accommodation under PACE or a SECURE placement)

The decision to offer accommodation under PACE will be made by the Local Authority. In making that decision, the Local Authority will be aware of the circumstance of detention and the reasons for bail being refused by the Police.

The Local Authority will share any information with the carer as they see fit and necessary to ensure the well-being of the child and to ensure that the carer is privy to any risks that they know to be present.

The Police will complete and provide to the carer a **“Prisoner Escort Record Form”** (PER) – this is a nationally agreed form, used in the transfer of detainees to different agencies whilst in Custody; it documents risks that need to be understood by those agencies.

The PER will include:

- The offence charged
- Any evidence of suicide and self-harm, propensity to violence, risk of escape drug and alcohol usage
- Any racial or homophobic motivation
- Any communication or language difficulties
- Details of medical and mental health needs
- Details of property and medication that is being transported with the detainee

The PER form includes a “History of Record and Events” form that serves as a log to record any events chronologically. As the transferred juvenile remains on “remand” but in the care of the Local Authority until they are taken to court, it would be advisable that carers record any relevant information on this record, during the juveniles stay which would include:

- Time of arrival
- That the detainee has gone to bed
- Medication / food and drink provided
- Any change in behaviour

The Police will retain a copy of the PER form along with the custody record. It would be advisable that the LA / carer also retains their copy of the PER for such time as is necessary and in compliance with Data Protection legislation.

The Police will also provide to the carer:

- The detainees property, (taken from them during their detention)
- Medication prescribed during their detention
- Any relevant medical forms detailing what is prescribed

Appendix 2

Issues that must be discussed with the Police in order that the Local Authority can make the right accommodation decision for a young person charged with an offence

Police Custody will make contact with the Local Authority, in order to request either a SECURE bed or SAFE accommodation under PACE for a young person.

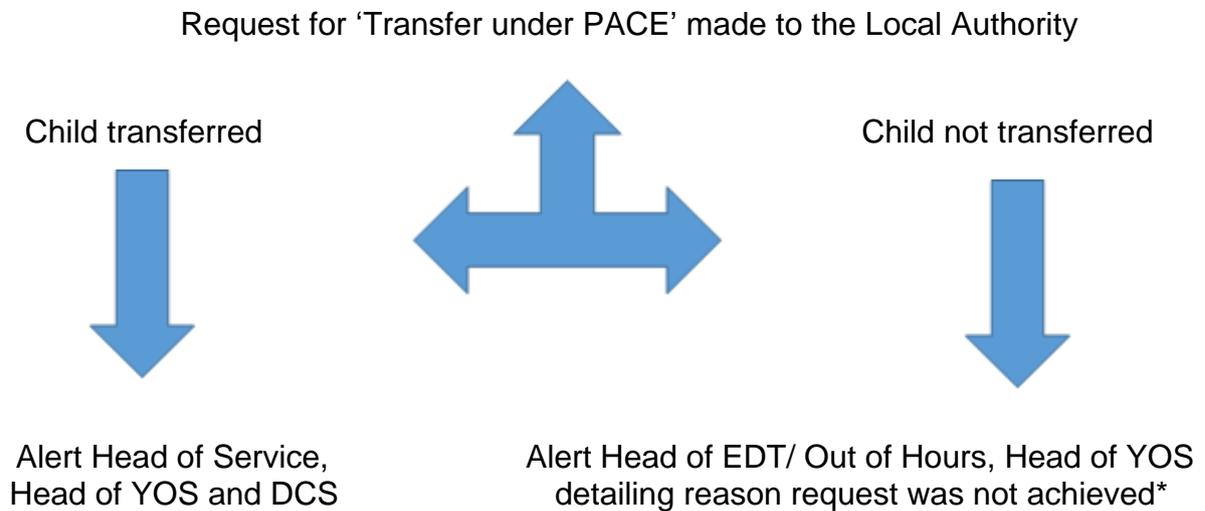
By law, the Police follow a different criteria (to the Local Authority) when requesting that a young person be provided with SECURE accommodation. The Police should request SECURE accommodation where they perceive there is a risk of serious harm to the public.

The Local Authority should cover the following points with custody in order to determine the right accommodation outcome for the young person.

- 1) Why has the young person been refused bail?
- 2) Could the young person be bailed if a suitable bail address could be found (which includes the GM-commissioned s.38 bed for 16/17-year olds, currently at the DePaul Trust in Burnage, Manchester)?
- 3) Why are the Police requesting a SECURE bed?
- 4) What evidence do the Police have, that the public will be at risk of serious harm?
- 5) Is the young person presenting with any vulnerabilities ie self-harm, panic attacks?

Appendix 3

Escalation process following request for accommodation under PACE



*When alerting Senior Management that a transfer under PACE has not been achieved the reasons for this need to be detailed under one of the three following categories:

1. No suitable bed available
2. Request deemed inappropriate as offence and/or risk of absconding doesn't meet criteria.
3. Request for transfer deemed not appropriate based on circumstantial evidence i.e. distance of placement, timing of request.

Local Authorities and GMP should explore the reasons for transfer not occurring, to reduce risk of future failure.