

**HOME OFFICE CONCORDAT ON  
CHILDREN IN CUSTODY  
SUPPLEMENTED BY THE  
LONDON PROTOCOL FOR THE  
PROVISION OF LOCAL AUTHORITY  
ACCOMMODATION FOR CHILDREN  
HELD IN POLICE CUSTODY**

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London  
safeguarding  
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## London Protocol: Aims

This Protocol aims to facilitate an improvement in outcomes for children held in police custody – a group of children who often end up in custody because of their vulnerability and who, whilst in custody, will be at a point of crisis. It seeks to facilitate this by supporting professionals involved in the transfer of children in custody to local authority accommodation to understand both their own roles and responsibilities and those of their colleagues and thereby to facilitate joint working. It also sets out how local areas should monitor the implementation of this Protocol and ensure that feedback develops and enhances local practice.

The purpose of this protocol is to supplement the Home Office Concordat on Children in Custody. The Concordat forms the basis for this document and the London specific sections are highlighted. These sections cover the following:

- More detailed guidance in relation to specific post charge arrangements
- Contact details for children’s social care and police custody suites.
- Recommendation that local areas establish [if not already in existence] arrangements for the regular review of cases of children held in custody by senior leaders in the police and children’s social care.

It should be noted that child/ren is used throughout this document to refer to anyone under the age of 18. Juvenile is only used when quoting other documents. Whilst it is recognised that older teenagers in particular might not want to be referred to as a child, the use of this language reflects their legal status and recognises their vulnerability as children. It is intended to emphasise that children who may not appear vulnerable and might look like adults, are still in fact children and should be treated as such.

*This protocol should be read in conjunction with the Police and Criminal Evidence Act 1984 (PACE), CODE C, Revised Code of Practice for the detention, treatment and questioning of persons by Police Officers. Available at:*

<file:///K:/Communities/Children%20Services/London%20Safeguarding%20Children%20Board/Thel%20London%20Safeguarding%20Children%20Board/MPS%20&%20Probation/Appropriate%20adults/pace-code-c-2017.pdf>

# Principles and Practice

## 1. Whenever possible, charged children will be released on bail

1.1 After a child has been charged, there is a presumption that they will be granted bail. Bail is by far the most preferable option for most children charged with an offence. It ensures that they spend as little time as possible in police custody and, in ideal circumstances, will allow the child to return home in advance of their court appearance.

1.2 People of all age groups have a right to bail under the Bail Act 1976 and there is a presumption that this right will be granted. The decision to deprive an individual of this right is always a serious step, but especially so in the case of children. In some cases, however, the prospect of releasing a child on bail may raise concerns that it would prevent justice being done, lead to further crimes or even compromise the young person's safety. A full list of possible reasons for denying the right to bail after charge can be found in *section 38 (1) of the Police and Criminal Evidence Act 1984*. It is important to bear in mind that concerns which might lead to the refusal or restriction of bail must relate exclusively to the period of time between the child's release and their appearance at court. This consideration may allay a custody officer's concerns. 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 the child's bail.

### Conditional bail

1.3 Conditional bail was introduced to ensure that detainees are released on bail whenever possible, even when the prospect of their immediate release from custody does raise some concerns.

1.4 Conditions of bail may involve restrictions related to residence or exclusion zones, imposing a curfew, the requirement to sign on at a police station or a requirement to attend educational training.

1.5 A custody officer should consider precisely what their concerns are about releasing a child on bail, and make every effort to allay these concerns with conditions. It is useful to contact the Local Authority's Youth Offending Team to discuss concerns and appropriate conditions, which the Youth Offending Team may be able to help enforce.

1.6 Appropriate adults should observe this decision-making process carefully. In any circumstance where they think the criteria for denying the right to bail have not been met, they should make representations to custody officers and ensure that the child's legal advisor is informed. Where the custody officer outlines the concerns that have led to the denial of bail, the appropriate adult should engage the officer in discussion to explore whether these concerns could be alleviated by conditions.

1.7 If, eventually, the custody officer decides that the right to bail – even with conditions – must be refused and the child must be retained in custody, s/he must make a written record of the reasons for this refusal as soon as possible. This is a requirement under *section 38 (3) of the Police and Criminal Evidence Act 1984*.

### **London Protocol: Arrested on a warrant**

If a child is arrested on a warrant not backed for bail, or for breach of a condition of a court remand, then these children will generally remain in police custody until produced at court at the first opportunity. The legal requirement of s.38(6) PACE to obtain local authority accommodation does not apply in these circumstances.

However, it might still be appropriate for the local authority to call or visit the child whilst they are in custody to assess their physical and mental health and their emotional well-being. It might also be appropriate to provide activities for the child such as games or books. *It is important to be aware that any items intended for a child should be given to the custody sergeant who will carry out a risk assessment to decide whether it is safe and appropriate for the child to have them. Under no circumstances should items be given directly to a child.*

## **2. Children denied bail will be transferred whenever practicable**

2.1 After a child is charged with an offence, custody officers have a duty under section 38(6) of the Police and Criminal Evidence Act 1984 (PACE) to secure the transfer of the arrested child to Local Authority accommodation; Local Authorities have a duty to accommodate the child under section 21 of the Children Act 1989. However, one of the circumstances where PACE allows police to retain a child in custody is where a transfer is impracticable.

2.2 In this context, the term ‘impracticable’, 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’.

2.3 Rather, ‘impracticable’ should be taken to mean that exceptional circumstances render movement of the child impossible or that the child 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. This must be judged on a case-by-case

## Home Office Concordat on Children in Custody

basis, and a decision of no transfer due to impracticability should be cleared by a duty inspector.

2.4 If the decision is made that transfer is impracticable, the custody officer must carefully record the reasons behind this decision on the PACE 38(6) certificate (a standard template of this form is attached at Annex C). The completion of this certificate is a requirement under *section 38 (6) of the Police and Criminal Evidence Act 1984*. It must be presented to the court before which the child appears. Any individual who receives this certificate will be able to flag apparent or suspected failures to the responsible police force via an Online Flagging Mechanism (more information on this mechanism can be found in Annex D). This sends the relevant Arrest Summons Number (ASN) to a dedicated inbox at the responsible force, allowing the force to review the case and determine whether failures took place.

2.5 Appropriate Adults can help to make sure that transfers are secured whenever practicable. In cases where transfer is deemed impracticable, they should discuss this decision with custody officers to seek clarification that the movement of the child is genuinely impracticable and that retention in police custody is the best available option. They should also encourage custody officers to charge children as soon as it is clear that this is the appropriate decision, in order to avoid transfers being complicated due to the lateness of the charge.

### **3. Secure accommodation will be requested only when necessary**

3.1 If a custody officer decides that transfer is practicable, their next step is to determine whether secure or non-secure accommodation is required.

3.2 The Police and Criminal Evidence Act is very clear about the criteria required for the police to justify the request of secure accommodation: the child must be 12 years or older and the custody officer must believe that this child poses a risk of serious harm to the public between being charged and appearing at court. This is a very high bar for a child to meet.

3.3 There will of course be cases where it is important and right to request secure accommodation, but a custody officer must consider this carefully and be willing to discuss their judgement with Appropriate Adults.

3.4 Appropriate Adults should try to understand the custody officer's concerns; however, if they are not convinced that the child genuinely poses this high and threatening level of risk, they should make representations for the request of non-secure accommodation instead.

3.5 It should be remembered that 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 and ensure that all risks are considered.

3.6 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.

3.7 The specific point of contact will vary depending on the Local Authority and should be confirmed at a local level. If unsure, a sensible first point of contact may be the Youth Offending Team or Emergency Duty Team (a contact list is available *here*).

3.8 The custody officer should give the Local Authority the following information:

- *The child's personal information, including details of any vulnerabilities;*
- *The nature of the offence;*
- *An explanation as to why the child poses a risk of serious harm to the public.*

## 4. Local Authorities and secure accommodation

4.1 When the police decide whether to request secure accommodation for a child, they employ their own test: does the child pose a risk of serious harm to the public?

4.2 Under *section 25 of the Children Act 1989\**, Local Authorities also have minimum criteria that a child must meet in order to be placed in secure accommodation. The child may only be lawfully detained in such accommodation if the Local Authority believes:

- *that –*
  - *he has a history of absconding and is likely to abscond from any other description of accommodation; and*
  - *if he absconds, he is likely to suffer significant harm; or*
- *that if he is kept in any other description of accommodation he is likely to injure himself or other persons.*

4.3 Although the tests employed by police and Local Authorities vary slightly, a child who meets the police criteria is also likely to meet the Local Authority criteria, due to the risk of causing harm. (It should be remembered that the assessment is not of whether the child is generally capable of causing harm, but of whether they are likely to cause harm in the period between being charged and appearing at court).

4.4 If a situation arises where a Local Authority disagrees with a custody officer's assessment of risk and feels the Local Authority cannot lawfully meet the criteria for secure accommodation under the Children Act, the matter should be escalated as quickly as possible under whatever local arrangements are in place. A decision must be reached as to the required accommodation.

4.5 There may also be circumstances in which the police request non-secure accommodation but the Local Authority feels that secure accommodation is needed. After accepting a request for non-secure accommodation, it is for the Local Authority to determine which type of accommodation is most appropriate: secure accommodation is one of the options available. However, the law does not recognise a situation where the police request non-secure accommodation but the Local Authority refuses to provide any accommodation because they believe secure accommodation is more appropriate. Police requests for non-secure accommodation must always be accepted, regardless of the type of accommodation the Local Authority then decides to place the child in.

### **5. Which Local Authority?**

5.1 According to the ruling in *M v Gateshead Council (2006)*, a police force can contact any Local Authority it chooses with a request for secure or non-secure accommodation, and it is then that authority which is bound to provide accommodation under the Children Act 1989. Clearly, the decision of which to contact will be determined by the officer's common sense: the most sensible choices would generally be the authority in which the police station is located, the authority in which the crime was committed or the authority in which the child is normally resident.

5.2 The starting position of Local Authority staff receiving this request should be to confirm that secure accommodation is definitely needed. They should try to understand the reasons for the custody officer's belief that the child poses a risk of serious harm to the public between transfer and their court appearance.

5.3 If unconvinced that secure accommodation is required, Local Authority staff should challenge the custody officer's request and discuss potentially suitable alternatives. However, it is ultimately the custody officer's decision as to what type of accommodation they request, and disagreement with police judgement is not a lawful reason for a Local Authority to refuse a transfer request.

5.4 Following a request for secure accommodation, the Local Authority must do everything within its power to find secure accommodation for the child in question. If the Local Authority fails to find any secure placements, or reach agreement with the police as to any suitable alternative for the child, then custody officers will have no choice but to retain the child in police custody for the protection of the public.



## London Protocol: Which Local Authority?

- The custody sergeant will, in the first instance contact the authority where the child resides or, if the child is 'looked after' / 'in care', they will contact the authority with parental responsibility for the child.
- Where the custody sergeant is not clear which authority the child resides in or which authority has parental responsibility, they will call the authority with which they think the child has the strongest connection. This may be the borough in which the custody suite is located.
- If that authority is not where the child lives and does not have parental responsibility for the child, it is the responsibility of that authority to make every effort to find out which authority does and inform them of the child in custody and the requirement to provide accommodation. They should update the custody sergeant at regular intervals.
- If they are not able to identify the responsible authority within a reasonable time frame, the responsibility to accommodate the child will remain with them.

## 6. Local Authorities will always accept requests for non-secure accommodation

6.1 A police request for non-secure Local Authority accommodation is appropriate for the vast majority of charged children who cannot be released on bail. It is required for:

- *children under 12 years of age;*
- *children who do not pose a risk of serious harm to the public.*

6.2 After a custody officer has decided to deny a child of the right to bail and has determined that non-secure accommodation is appropriate, s/he must contact the Local Authority (in accordance with local arrangements or, if unsure, the Youth Offending Team or Emergency Duty Team) to request accommodation for the child. The custody officer should provide Local Authority staff with the following information:

- *The child's personal information, including details of any vulnerabilities;*
- *The nature of the offence;*
- *An explanation as to why the child has been denied the right of bail, and why conditions would not be sufficient to allay these concerns.*

6.3 The starting position of the Local Authority should be to confirm the reasons for the refusal of bail and understand the reasons why conditional bail is not possible, in order to

make an informed decision as to what type of accommodation is suitable.

6.4 It is up to the Local Authority to determine the most appropriate type of non-secure accommodation for the child, and it has considerable freedom in the options open to it. Where possible, the most preferable alternative is to return the child to the care of family or friends, although obvious exceptions to this would include instances where the only available options raise safeguarding concerns. Other options include placements with foster families or in a children's home.

6.5 Local Authorities may also decide to place children in secure accommodation, even if this was not the custody officer's request. The circumstances in which a placement in secure accommodation is permissible are outlined in *section 25(1) of the Children Act 1989*\*. Note that the Local Authority still has an absolute statutory duty to accept a request for non-secure accommodation, even if it then opts to accommodate the child in secure accommodation.

6.6 If a custody officer's request for non-secure accommodation is not met by the Local Authority, s/he should contact the duty inspector immediately. The duty inspector should seek a resolution which prevents a failure to secure accommodation, escalating the matter further if required.

### **London Protocol: If a child is kept in police custody**

When a child is not transferred to local authority accommodation and it is necessary for them to remain in police custody overnight, the local authority will, at a minimum, undertake a telephone conversation with the child to assess their health and welfare and offer support.

Where there are concerns about the child's health or emotional wellbeing, the local authority will ensure the child is visited at the police station.

Where a child could be in police custody for longer than an overnight stay, it is very important that the following action takes place:

- The custody officer reviews the decision not to bail the child at least once every 9 hours as stipulated by law.
- The local authority continues to try and find appropriate accommodation for the child and reports back to the custody suite on progress at least once every 9 hours.
- The local authority takes all possible steps to support the child by speaking to the child, arranging visits by local authority staff, taking in games or books etc for the child. *It is important to be aware that any items intended for a child should be given to the custody sergeant who will carry out a risk assessment to decide whether it is safe and appropriate for the child to have them. Under no circumstances should items be given directly to a child.*

## 7. The power to detain will be transferred to the Local Authority

7.1 When a police officer hands a child over to Local Authority staff, they also transfer the power to lawfully detain that child:

*Where an arrested juvenile is moved to Local Authority accommodation under subsection (6) above, it shall be lawful for any person acting on behalf of the authority to detain him. PACE 1984, section 38(6B).*

Simultaneously, section 39(4) emphasises that, at the point of transfer to the Local Authority, police custody officers' responsibility for the child ceases entirely.

7.2 It is important that Local Authority staff remain conscious of the level of responsibility that this transfer of power places upon them. A custody officer has taken the decision that this child must be held in lawful custody until their appearance at court; following the transfer, Local Authority staff are accountable for ensuring that this lawful custody is upheld. They become the custodians, with the same legal responsibility toward the child as a police custody officer has toward a detainee in a police cell. This includes the duty to transport the child to court.

7.3 When transferred from police custody to Local Authority accommodation (especially non-secure accommodation), the opportunities for a child to abscond are likely to increase. It may also appear to the child that the nature of their detention has become less serious and that absconding from Local Authority accommodation is different to escaping from a police cell. Legally, this is not the case. If the child absconds they are committing the serious offence of escaping lawful custody.

7.4 It is important that the child is made to understand this: firstly in order to prevent genuine misunderstandings leading the child into more difficulties, and secondly to ensure that any subsequent charge of escaping lawful custody is justifiable, as it will likely rely on evidence that the child understood the terms and nature of their detention. It is therefore essential that the nature of the detention is clearly emphasised and explained to the child when the handover from police to Local Authority takes place.

7.5 As the child is transferred from the police to the Local Authority, the police officer should – in the presence of 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 that you have to stay in custody until your court date.
- If you were an adult, you would stay in the 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 will stay until then.
- 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 out 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.

7.6 The police officer and the Local Authority staff should be satisfied that the child has understood these points, offering further explanation if necessary.

7.7 If an Appropriate Adult is aware that a child is due to be transferred to Local Authority accommodation, they may also be able to help explain the situation and prepare the child for the handover.

### **London Protocol: Transferring a child to local authority custody**

Given the level of responsibility which is passed from the police to the local authority when a child is transferred to the local authority, the local authority should ensure that the person who attends the custody suite to take responsibility for the child and their belongings is either an officer of the local authority or someone who can reasonably take delegated responsibility on behalf of the local authority.

Officers at the custody suite should advise the local authority on the level of risk the child presents to themselves or others and, in particular, the likelihood that they will try to abscond. This will inform the decision of the local authority regarding how many staff attend the custody suite to take responsibility for the child and transport them to their accommodation.

When considering who is appropriate to collect the child, the local authority should take the following into account:

- Has the person been through a 'vetting' process – to include an enhanced Disclosure and Barring Service check but also additional processes to ensure that they are skilled and confident to support a child who may be a risk to themselves or others.
- That the person is aware of the level of responsibility that they are taking on when the child is transferred to their care by police officers at the custody suite and that they know what to do if the young person tries to, or successfully, absconds from their care.

Examples of who the local authority might decide can collect a child from a custody suite include:

- A support worker from a supported housing scheme the young person is going to stay.
- The foster carer where the child will be staying for the night or weekend.
- A member of staff from an approved transport provider.
- A family support worker

Where a local authority makes arrangements for the child to be accommodated by their parents or other family members, it may be appropriate for those family members to collect the child from the custody suite. However, wherever possible a family support worker or equivalent should also attend the custody suite to take responsibility for the child and

accompany them to the family member's accommodation. This is important because, even where family members are willing to accommodate the child overnight, it is important that both the child and family get support to manage what can be a highly stressful time and one where there is an increased likelihood of conflict resulting from the arrest.

The local authority will confirm in writing and in advance of attendance at the custody suite, who will attend the police station from, or on behalf of the local authority, to take responsibility for the child.

*Email and phone contact details for the custody suite and the out of hours/emergency duty teams for the local authority accommodation are included in Annexes F and G of this document.*

The officer of the local authority or the person delegated by the local authority to collect the child will attend the custody suite with ID and proof of employment. They will be expected to sign for the child and their belongings.

All risk assessments and medical records completed in custody, including assessments of the risk of self-harm, should be discussed and copies passed, where relevant, to the local authority officer.

Medication prescribed to the child whilst in police custody should be handed over to the local authority officer who will pass this on to the child's carers who will be responsible for administration during the child's stay, and disposal after they are handed to the courts (unless the medication forms part of their personal property).

The police will complete and provide the local authority officer with a copy of the Person Escort Record (PER) to provide relevant information to the placement.

### **London Protocol: Transport to and from police custody, local authority placement and the court**

Transport to the placement will normally be provided by the local authority. However, there may be circumstances where it is more practical for the police to provide transport or there are specific reasons that suggest police transport would be preferable.

The local authority is responsible for making arrangements to transport the child to the next available court.

### **London Protocol: Escape from the lawful custody of the local authority**

- If a child goes missing prior to their court appearance they are committing the offence of 'escaping lawful custody' which is a serious matter [the child will have been informed of this prior to leaving the police station]. Carers should notify the police immediately upon disappearance, using the 999 system, informing the police where the child was last seen; whether they are likely to still be in the area and of any information regarding their whereabouts. Carers should also notify the local authority emergency duty team.
- Police resources will follow their normal procedures. There is no requirement to notify custody at this stage as the custody record will have been closed.
- A marker (E – Escaper) should be created on PNC by the OIC in line with normal procedures.
- The child should be arrested and returned to police custody for an investigation to commence.
- The local authority should ensure the parent or guardian of the child are informed of the situation.

## **8. Where a Local Authority fails to provide accommodation it will reimburse the police**

8.1 The police are not funded to accommodate under-18 year-olds in custody. It is therefore important that local police forces are reimbursed when a transfer to Local Authority care does not take place, for whatever reason.

8.2 This reimbursement is a long-standing statutory obligation for Local Authorities. Section 21(3) of the Children Act 1989 states that:

*Where a child has been... detained under section 38 of the Police and Criminal Evidence Act 1984, and he is not being provided with accommodation by a Local Authority... any reasonable expenses of accommodating him shall be recoverable from the Local Authority "in whose area he is ordinarily resident".*

8.3 The level of expense for overnight detention must be determined by the police force, and should be based upon the costs of cell use, staffing, healthcare and any other provision required for a detainee. Mechanisms for the recovery of these costs must be determined at a local level and will vary depending upon any existing reimbursement arrangements between police forces and Local Authorities.

## 9. Police forces will collect data on transfers

Clear data on the success rate of transfer requests is the first step towards identifying and addressing systemic problems. It provides an evidence base to inform discussions between the various local partners whose cooperation is required to ensure that transfers always happen as they should.

Using the standard template for 38(6) transfer data - available from the Home Office - forces should collect data on:

1. The number of children (i.e. under 18s) who are charged and detained in police custody overnight with no request for any accommodation made by police to the Local Authority;
2. The number of requests made for secure accommodation;
3. The number of transfers to Local Authority secure accommodation as a result of the request in (2);
4. The number of requests made for non-secure accommodation;
5. The number of transfers to Local Authority non-secure accommodation as a result of the request in (4).

This quantitative data is necessary to identify where problems are being encountered, both within force areas and nationally. However, in order to establish the reasons for these problems, forces may also find it useful to collect more qualitative data internally: this might include for example, the reasons for not requesting accommodation from the Local Authority and the reasons given by the Local Authority for refusing a transfer requests.

Police forces should share this data with Local Authorities and other relevant partners to inform effective working relationships and with Local Safeguarding Children Boards to enable them to hold relevant local agencies to account for complying with their statutory duties.

### **London Protocol: Escalation and monitoring and problem-solving processes**

#### **Introduction**

The Home Office Concordat makes clear that the police are not funded to accommodate under 18-year-olds in custody. However, it does allow that there are certain situations where it would be 'impractical' to transfer a child to local authority accommodation *[see 2.2, pg 6]*.

This London Protocol sets out an escalation process which aims to ensure that the police and children's social care come to agreement on the following:

- The facts of each case where a child is not transferred to local authority accommodation
- Whether it is appropriate for the local authority to reimburse the costs of the child's

stay in police custody.

### **The best interests of the child**

The best interests of the child will inform all decision making outlined in this escalation process.

### **Whilst the child is in custody**

- The custody sergeant will decide whether it is impractical to transfer the child to local authority accommodation – a decision of no transfer due to impracticability should be cleared by a duty inspector [see section 2 above].
- When considering whether to request alternative accommodation, officers should determine whether there is a reasonable prospect of the child getting 8 hours sleep if they are transferred. However, it is important to note that there might be circumstances in which a stay in police custody is likely to be so distressing that even if the sleep time will be less than 8 hours, it is still necessary to request alternative accommodation. When assessing whether there is a reasonable prospect of the child getting 8 hours sleep, officers should allow a maximum of 1.5 hours travel time to and from the alternative accommodation.
- Where it is decided that it is practical to provide local authority accommodation, the custody officer and emergency duty worker [EDT] or out of hours worker [OoH] will discuss the case and agree the type of accommodation the child requires.
- The EDT/OoH worker will make every effort to find the appropriate accommodation and will ensure the custody sergeant is regularly updated on progress, including if it proves impossible to identify accommodation and the child has to remain in custody
- Where there is agreement about the need to find alternative accommodation for the child and about the type of accommodation required, but the local authority has no accommodation available, there is no requirement to escalate the case in CSC but the sergeant should inform the duty inspector.
- If the custody sergeant has specific concerns about a young person, for example, it is a bank holiday weekend and if alternative accommodation is not provided the child will spend an extended period in custody, they should discuss this with the duty inspector and agree whether it should be escalated to the on-call manager at CSC.
- At any point in this process, if there is disagreement between the custody sergeant and the EDT/OoH worker over what the child requires, and they are unable to resolve this disagreement, both will escalate the concerns to senior officers.
  - In the case of the custody sergeant this will be Custody Support Inspector
  - In the case of the EDT/OoH worker this would be the on-call manager
  - If the matter is still not resolved and it is felt that the issue cannot wait until the next working day, the on-call manager and/or the CP Inspector should following their organisational policies regarding escalation.
- This escalation process will allow for decisions to be taken on:
  - The provision of accommodation;



- Resource allocation [for example agreeing that local authority staff will attend the custody suite]

It will also allow for the following decisions by officers at the custody suite to be reviewed and, where appropriate, changed:

- The decision to refuse bail
- The decision that it is practical for the local authority to provide accommodation
- The decision regarding the requirement for secure or non-secure accommodation
- Both the EDT/out of hours or within office hours worker and custody sergeant will keep records of the discussions and their outcome.
- The custody sergeant will complete a juvenile detention certificate and update the custody record in all cases where alternative accommodation is not provided. These records will explain the steps which were taken to identify the type of alternative accommodation required and the conversations with the relevant EDT/OoH to secure that accommodation. Where there was disagreement between the custody sergeant and EDT/OoH worker this should be recorded on the custody record.

### **Monitoring and problem solving**

- The local authority will take steps to ensure that requests for alternative accommodation are reviewed on a regular basis.  
Nb The details of individual cases are available to police officers in the Youth Offending Service and the local authority should review the police records against their own records of the case to ensure the accounts are consistent.
- Where there are discrepancies or misunderstandings regarding the request for alternative provision, the Local Authority will discuss this with the relevant custody suite manager and police and Local Authority records will be updated to reflect the outcome of these discussions. The aim is to ensure that there is a common understanding and record of the facts of the case.
- Local authorities may choose to review cases as they arise or to review them on a monthly basis.
- On a quarterly basis, the central custody team will write to the relevant assistant directors for children's social care, informing them if they have an intention to charge for a child's/children's stay in police custody. This will include personal data, so will be sent by secure email. The assistant director will review the requests and ensure there is a shared understanding of the facts of the case.
- Where there is agreement regarding:
  - The facts of the case, including whether it was practical to provide local authority accommodation
  - That the local authority did not meet its statutory duty to provide alternative accommodation

The local authority will pay for the child's/children's stay in police custody

- Where there is continued disagreement regarding either the facts of the case, or the legitimacy of the police request to charge the local authority for the stay in custody, the case should be escalated to Chief Inspector [there are 5 chief inspectors for custody suites across London] and through the normal local authority escalation processes to assistant director or director level.

### **London Oversight**

Local authorities and custody suites should feedback on implementation of this London Protocol to the quarterly London Children in Custody [CiC] meeting. This meeting to be co-chaired by a Director Children's Services and Chief Inspector in the central custody team.

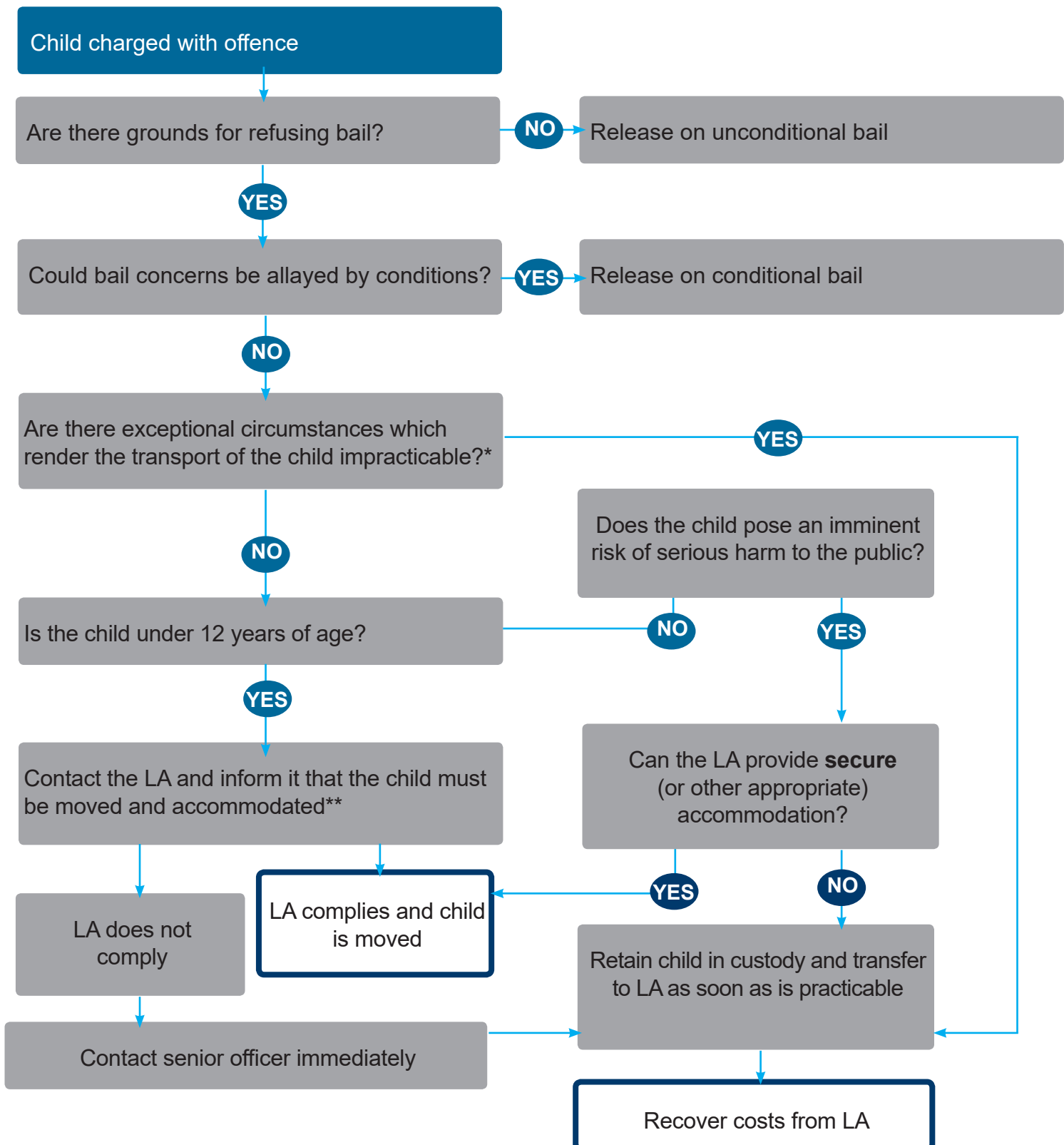
Issues raised at the London CiC Meeting could include thresholds for not being given bail; thresholds for secure/non-secure accommodation; decisions regarding the practicality of transferring a child to local authority accommodation; any difficulties custody suites have in identifying the responsible authority; concerns re: charging.

A report on the implementation of the Home Office Concordat, this Protocol and the outcome of local arrangements for transferring children to local authority accommodation, will be jointly prepared by the MPS and local authorities and reported to the Local Safeguarding Children Board on an annual basis.

# Annex A: Police process for children in custody

## Police process for children in custody

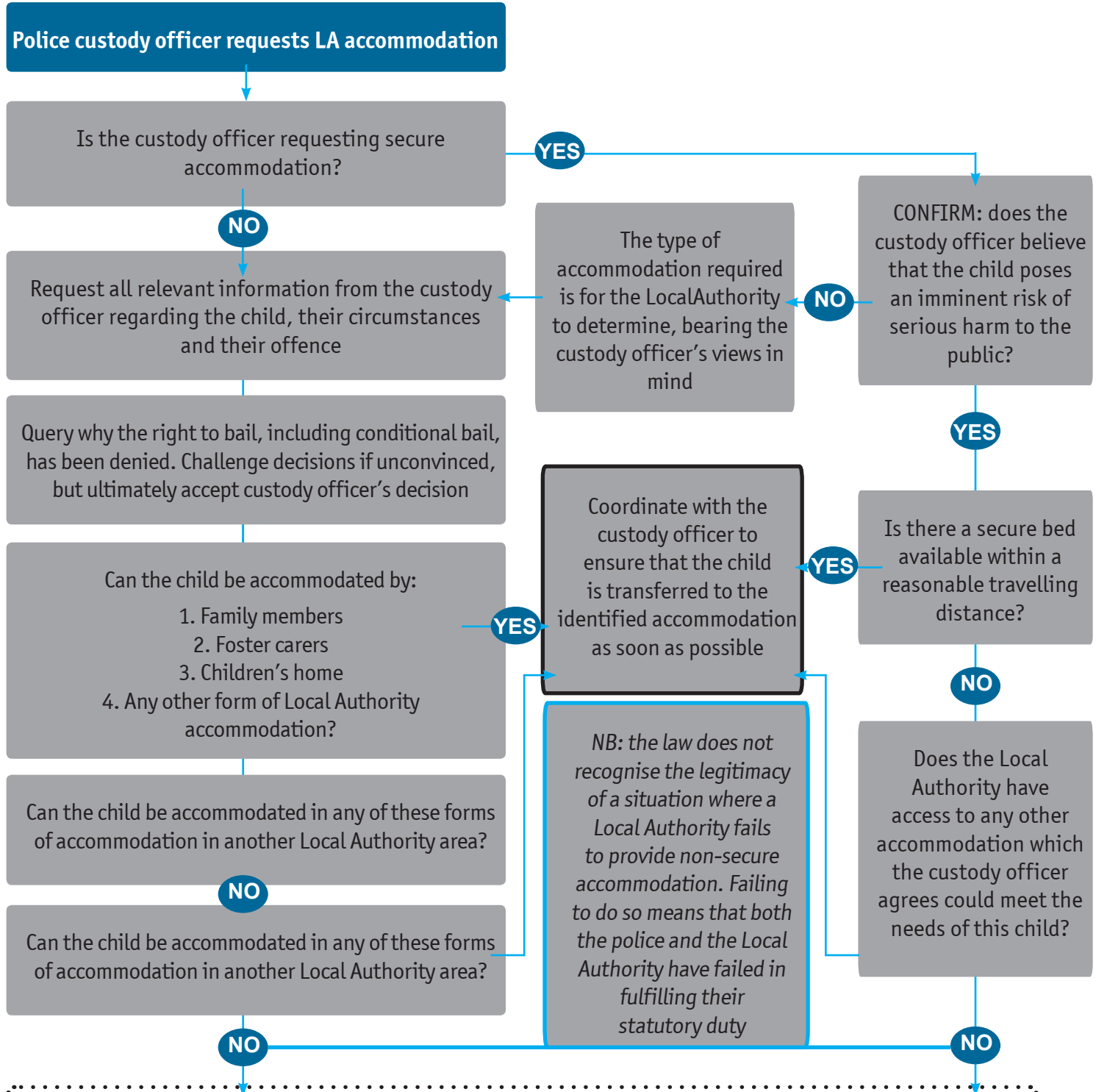
[under section 38(6) of the Police and Criminal Evidence Act 1984]



# Annex B: Local Authority process for transfer of children in police custody

## Local Authority process for transfer of children from police custody

[under section 21(2)(b) of the Children Act 1989]



Given the lack of any alternative, the police will have no option but to retain the child in custody until Local Authority accommodation becomes available. The Local Authority can be invoiced for the police's expense

# Annex C: Child detained overnight in police custody

## Child detained overnight in police custody

PACE 38(7) Certificate for Courts

Arrest Summons Number (ASN):

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Why was Local Authority accommodation not provided?

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What type of Local Authority accommodation was requested?

Non-secure accommodation

Secure accommodation

None, as transfer was impracticable

Any other relevant details:

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Explain why transfer was impracticable:

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Guidance on what constitutes lawful grounds for detaining a child overnight in police custody can be found on the reverse of this certificate.

If you have doubts as to whether this was a lawful detention, please flag this case to the relevant force for review, via the form at [www.surrey.police.uk/flag-detention](http://www.surrey.police.uk/flag-detention).

# Annex D: Guidance on PACE 38(7) Certificate

## Guidance

[on PACE 38(7) Certificate]

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' 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* or that the child 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.

### Secure accommodation

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

If secure accommodation was requested and was not available, then the police may

lawfully continue to detain the child. This is the case even if the Local Authority has failed to meet its statutory obligations.

### 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(6) 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 [www.surrey.police.uk/flag-detention](http://www.surrey.police.uk/flag-detention). This only requires the input of the case Arrest Summons Number (ASN). 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.

# Annex E: Children in custody online flagging mechanism

## Children in Custody Online Flagging Mechanism

For quality assurance of a 38(6) certificate

Section 38(7) of the Police and Criminal Evidence Act 1984 (PACE) requires police to provide courts with a certificate in instances where a child has not been transferred to Local Authority accommodation under PACE 38(6).

In the past, this certificate has served little purpose. PACE does not specify what information the certificate should include or what should be done in instances where police or Local Authorities appear to have failed to meet statutory requirements.

This concordat provides a standard template for the PACE 38(6) certificate. This template identifies the information most relevant to determining whether a child has been lawfully retained in police custody, or whether failures may have taken place.

If recipients of this certificate suspect that failures, on the part of the police force or the Local Authority, may have taken place, they are now able to bring these instances to the responsible police force's attention via an Online Flagging Mechanism, available at <https://surrey.police.uk/contact-us/children-in-custody-online-flagging-mechanism/>. This requires the input of the child's Arrest Summons Number (ASN), which is included in the certificate, and the selection of the relevant police force from a drop-down menu. This sends the ASN to a dedicated inbox at the force, thus allowing the force to review the case and investigate whether failures took place.

Over time, this mechanism may help forces to identify systemic issues. This will help to reduce the number of children detained unlawfully in police custody following charge and the resultant burden on courts to review 38(6) certificates