

Joint Derbyshire Protocol on Managing the Release of Children from Police Custody

**Police and Criminal
Evidence Act (Section 38)
and provision of Local
Authority (LA)
Accommodation**

November 2024

1. Aims

- i. The aim of this protocol is to safeguard children through avoiding, so far as is practicable, their detention overnight in police custody following charge and the denial of bail. It should also be recognised that for most children, entering Police custody for the first time is a traumatic and distressing experience. For these reasons the guidance supports the underlying principle that time spent in Police custody by children should be avoided wherever possible but, if necessary, kept to an absolute minimum.
- ii. This protocol is written with full cognisance of and in line with the 'Concordat on Children in Custody' - [Concordat on Children in Custody \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).
- iii. It is crucial that in all encounters with the police, those below the age of 18 should be treated as Child First. This protocol should be underpinned by the principle that all officers and practitioners must have the highest regard for the safety, welfare and well-being of children as required under S10 and S11 of the Children Act 2004 and the United Nations Convention on the Rights of the Child.
- iv. The protocol is also intended to clarify the duties and responsibilities of agencies in the management of arrangements for the transfer to LA Accommodation (LAA) of children and (aged 10 to 17 years) charged and denied police bail.
- v. The use of pre-charge police bail can also place considerable restrictions of a child and this protocol will set out the responsibilities of each agency in supporting preventing further offending through the appropriate use of bail conditions.

2. Scope

- i. This protocol applies to children (aged 10 to 17 years) who have been charged with criminal offences and then refused bail, or whom are being released on pre-charge bail.
- ii. This protocol represents a voluntary agreement between Derbyshire Constabulary, Derbyshire County Council Childrens Services, Derbyshire Youth Justice Services and Derby City Council Childrens Services.

- iii. There will be instances where a child held in a Derbyshire custody suite, is not a resident of Derbyshire. The LA in whose area the child resides will be the responsible authority and Police should contact the LA where the child ordinarily resides to discuss the transfer request. Police can request support from Derbyshire/Derby Children's Social Care and Youth Justice Services to liaise with responsible LA if required and/or provide any further information if known from children's services records.
- iv. The protocol will be subject to review to ensure it is effective in meeting the aims set out above.

3. Background

- i. Her Majesty's Inspectorate of Probation (HMIP) reports 'Who's Looking Out for the Children' (2011) identified several significant safeguarding concerns relating to the experiences of children whilst in police detention. LA Safeguarding Boards are responsible for overseeing the recommendations within this report. A key concern identified in the report is the overnight detention of children in police cells after police bail is denied, as opposed to transfer to accommodation provided by a LAA.
- ii. In 2014, the government established a working group on children in custody to address long-standing problems in the transfer of children from police custody to local authority accommodation, which is a requirement under the Police and Criminal Evidence Act 1984 and the Children Act 1989. This group, which included representatives from across government, found that forces and LAs often misunderstand their statutory obligations and very few have the effective local collaboration in place to ensure that these transfers happen as they should. To improve understanding and help forces and LAs build effective collaboration at a local level, the working group produced the Concordat clearly setting out each party's duties and providing a protocol for how transfers should work in practice. Derbyshire Constabulary along with Derbyshire County Council and Derby City Council are signatories to the Concordat.

4. Legal Context

- i. The primary legislation on the treatment of suspects in police custody, including children, is Part IV of the Police and Criminal Evidence Act 1984 (PACE). This is supported by the statutory guidance set out in PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers. PACE requires that anyone who appears to be under 18 is treated as a child in the absence of clear evidence that they are older.

- ii. There is a presumption in favour of bail. Section 38(1) PACE states that the custody officer shall order the release of a detained child after charge unless one of the following exceptions apply:
 - their name or address cannot be confirmed
 - there are reasonable grounds to believe the person will fail to attend court
 - their detention is necessary for their own protection or to prevent physical injury to another, or to prevent the loss of/damage to property
 - there are reasonable grounds to believe that detention is necessary to prevent interference with the administration of justice or with the investigation of offences
 - their detention is in their own interests
 - *(s63(B) PACE permits detention after charge for the taking of a sample)*

- iii. Where bail is denied Section 38(6) PACE places a duty on the police to transfer children who have been refused bail to LAA rather than keeping them in the police station overnight. There are two exceptions to this:
 - 1) where the Custody Sergeant certifies that it is impractical to move the child to LAA; or
 - 2) where the child has attained the age of 12 and no secure accommodation is available, and keeping the child in non-secure LAA would not be adequate to protect the public from serious harm from the child.

- iv. The Concordat states that the term ‘impracticable’ is often misunderstood. It does not relate to the availability of LAA or transport, the nature of the accommodation offered or the child’s behaviour. See 6 vi for more details.

- v. The threshold ‘protecting the public from serious harm’ should be considered to be relatively high and to only be applicable in the most serious of cases.

- vi. All partners including Police Officers, Children’s Services and Youth Justice Services must be minded that the thresholds that must be met for a Court to remand a child into custody are very high, and that children under the age of 12 *cannot* be remanded into custody without application to the Home Office. The thresholds in the Youth Remand Criteria should also inform discussions about the Local Authority accommodating children under Section 20 of the Children Act 1989. All partners acknowledge that outcomes for Looked After Children are poor in many areas, including youth justice, and we should be committed to keeping children within their familial unit, where it safe to do so, including when this constitutes a children’s home or foster care environment, and the Local Authority are the Corporate Parent. If the Youth Remand Criteria and relevant thresholds are not well understood, there is a risk that children will be detained in police cells overnight for the sole purpose of attending a Remand Hearing in Court in the morning, only for Remand into custody

for that child to be legally unachievable.

The thresholds in the Youth Remand Criteria are detailed in the embedded document below.



Remand Criteria.doc

vii. **Breach of Bail & Warrants**

Under PACE there is no legal requirement to transfer a child who has been remanded due to a breach of bail or a warrant issued by the court. In Derbyshire however it has been agreed that the same process will be followed as if the child was being remanded for an offence.

5. **Process for Transferring Children to LAA**

- i. Once a decision has been made to remand a child then contact should be made with the relevant LA making them aware of the decision and the expectation that they be transferred to LAA at the earliest opportunity

Derby City

- ii. In hours Police should contact (01332) 642444 and ask for the Derby Youth Justice Service (Derby YJS) Duty Team, whenever a child is detained in Police Custody. This call should take place as soon as possible and should not be left until the decision to refuse bail has been taken. In the event that accommodation is sought by Police for the child, Derby YJS will refer to a script that enables Derby YJS to identify whether a PACE bed or alternative accommodation is being sought so that Derby YJS and Derby Children's Social Care Services can act accordingly. The script is part of the 'Protocol For When Police Contact Derby YJS Requesting Bed For Child They Have Detained' which is embedded below this paragraph. Police can also send supporting documentation to DerbyYOT@derby.gov.uk which is a monitored inbox, but documentation should only be sent *after* the call has taken place, so Derby YJS have the necessary context. As soon as Derby YJS have received the information from Derbyshire Police, they contact Derby Children's Social Care services so that both services can work collaboratively, especially when a child is open to both services, and so that only one call is required from Derbyshire Police to instigate the process.



PROTOCOL FOR
WHEN POLICE CONTACT

- iii. Out of office hours (i.e. between 5pm and 9am) police should contact the Derby Careline Service on (01332) 956607. This is a 'professionals only' line. Derby Careline can also be contacted by email on DCCcareLine@derby.gov.uk.

Derbyshire

- iv. For children whom fall under the county contact should be made with both the Youth Justice Service and Childrens Services for both Starting Point in daytime hours, and out of hours this should be via Call Derbyshire (01629 533190). It is vital that contact is made as soon as possible to enable timely decision making.
- v. The Police and LA must ensure they refer to the *Guidance for transferring Children and Young People from Police Custody to Local Authority Accommodation (PACE s38)* and that there is timely and comprehensive recording of all discussions and decision making in relation to transfer requests. This should be on the police custody log and in terms of the LA all communications and decisions relating to a child that is known must be recorded. In Derby those children known to the Derby YJS must be recorded on the ChildView case management system by Derby YJS whereas Derby Children's Social Care services will record on the Liquid Logic LCS system. In the county on Mosaic.
- vi. Typical actions undertaken by Youth Justice Services and Children's Social Care services, whether working in partnership or independently, include:
 - Checking to see whether the detained child has any vulnerabilities or health or other issues that the Police need to be made aware of
 - Liaising with the Criminal Justice Liaison and Diversion Team to understand the child's presentation in the Police cells and any other issues raised by the child to CJLDT.
 - Checking to see whether there are any obstacles to the child returning to their normal home address and, in cases where Police will not release to that address but a PACE bed is NOT required (e.g. when the victim of the alleged offence for which the child has been detained also reside at that address and re-victimisation is considered likely), YJS and CSC will work with the person(s) who hold Parental Responsibility for the child to identify another safe place that the child can be released to with the PR holder(s)' express permission. This will include exploring wider familial networks.

- Checking to see whether the child is an open case to either service, identifying and updating allocated practitioners in both services and involving them in any of the work undertaken where possible (i.e. they are in work and accessible).
 - Checking to see whether any aspect of the child's arrest and detention are significant in another context (e.g. the child was detained in an area they are prohibited from entering under Court Order – so they are in breach of that Order whether they committed the alleged offence or not).
- vii. The LA have an absolute duty to seek suitable and safe accommodation for the child and the child should only remain in custody overnight if transfer to non-secure is impracticable (where the remand criteria above is clearly met). However, there needs to be an understanding that at times, formal placements are not available out-of-hours.
- viii. Derbyshire Constabulary along with the relevant LA will work together to ensure the accommodation in which the child is placed receives sufficient information about the child, to ensure they can meet their needs and deal with any presenting risks. A Prisoner Escort Record (PER) form will be completed by the custody officer and provided to the LA.
- ix. The responsible Local Authority will arrange transport for the child to the accommodation in which they will be placed. The Local Authority will make arrangements, appropriate to the accommodation arrangement put in place, to transport the child to the next available court.
- x. The responsibility for transferring the child to the agreed upon accommodation on release from Police custody is negotiated between the YJS and CSC services and will often be contingent on who best knows the child (where a pre-existing relationship is in place) or who has the closest relationship with the family. If this occurs Out of Hours, this again will need negotiation between Police and Out of Hours Social Care services, and potentially Secure transport.
- xi. To ensure accurate record keeping the relevant LA will provide an appropriately redacted copy of their log relating to decisions regarding the child that can be copied on to the police custody record.
- xii. For Looked After Children, but by a Local Authority outside of Derbyshire/Derby, it is the responsibility of the Local Authority who have responsibility for the child, not Derbyshire or Derby.

6. Secure Accommodation

- i. Police can only lawfully request secure accommodation if they believe the child poses an imminent risk of serious harm to the public, between being charged and appearing at court. This is a high threshold that is rarely met, as serious harm means - *Death or serious personal injury, whether physical or psychological. PACE s.38(6)(b).*
- ii. If the child has attained 12 years **and** threshold for secure is believed to be met the Police Custody Officer shall specifically request secure accommodation and ensure that the rationale for that request is clearly communicated to the Local Authority Children Social Care.
- iii. If the LA Children's Social Care do not agree that threshold for secure is met, they must provide their reasons for this and suggestions on alternative non-secure accommodation to manage the risk and meet the child's needs. Childrens Social Care will communicate this to the Custody Sgt, if the Custody Sgt is not in agreement with the Head of Service, Childrens Social Care will request Custody Sgt seeks the views of the Custody Inspector. The Custody Inspector Decision is final - If the Custody Inspector agrees threshold for secure is met the Local Authority must make all reasonable efforts to obtain secure accommodation and then arrange transport for the child to the secure accommodation and to the next available court. However, there needs to be an awareness that currently, nationally there are extremely limited secure beds so there will need to be pragmatic decision making.
- iv. If the Custody Inspector does not agree threshold for secure is met, non-secure accommodation request should be pursued.
- v. Transfers should be arranged, unless one of the following exceptions applies:
 - a. Where the Police and Local Authority agree that it is impracticable to move the child to local authority accommodation. In this context, the term 'impracticable', is often misunderstood (see 4(iv)). 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 basis, and a decision of no transfer due to impracticability should be cleared by a duty inspector.
 - b. When the threshold for secure accommodation has been met but there are no secure accommodation placements 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.

7. Non-Secure Accommodation

- i. The LA has a statutory duty to accept all transfer requests from the Police for non-secure accommodation and is responsible for determining the most appropriate type of non-secure accommodation for child. The LA decision is final, and the Police cannot keep the child in custody overnight if they do not agree with the suitability of the accommodation provided by the Local Authority – this may include returning the child to the location of the offence for which they are being investigated, or wider familial networks. Similarly, if a child is already Looked After by the Local Authority, it may be the best decision to return to their existing home as changes of placement should be avoided unless unsafe.
- ii. When considering the most appropriate placement for a child (when the threshold for secure accommodation is not met) the Local Authority should consider:
 - The individual needs of the young person, and accommodation should be provided which matches the young persons' needs, including safety.
 - The need to transport and facilitate the child's attendance at court on the required date.
 - The views of the person(s) that hold Parental Responsibility for the child.

8. Children in Custody Overnight

- i. Any decision by the Police custody sergeant to deny a PACE transfer which would subsequently result in a child remaining in police custody overnight must be immediately notified to the Duty Inspector for consideration to ensure the detention decision is in accordance with the protocol.
- ii. To ensure compliance with PACE, in all cases where a child has been kept in custody overnight the police will complete a Detention Certificate, explaining the reasons for the detention, this certificate must be presented to the court before where the child first brought.
- iii. The LA should continue throughout the period to seek alternative accommodation and the child should be moved at any time unless impracticable to do so (see 4(iv)).
- iv. The police remain responsible for the care and welfare of all persons in their detention.

9. Issuing Bail Conditions (Post and Pre charge)

- i. When a child is in custody, the Custody Officer is expected to have regular contact with the OIC (Officer in the Case) in respect of the ongoing investigation / disposal planning, constantly reassessing the need for the detention of the child.

- ii. If the evidential test is met and Police RJ (Restorative Justice) / Community Resolution is not an available option, and an out of court disposal decision is required then the case will be referred to Youth Justice and the child will be bailed for **no more than 4 weeks**.
- iii. Where the evidential test is not met and it is necessary to release a child and it is considered that pre-charge bail with conditions is necessary than the relevant Social Care team must be consulted.
- iv. The pre or post charge bail conditions that Police can place upon children will sometimes work against other interventions being delivered by partner agencies including Children's and Youth Justice Services, that the police might not be aware of. This is why early and regular contact and collaboration with Children's Social Care Services and with Youth Justice Services is needed.
- v. Bail conditions should be agreed as a collaboration between the police, youth justice services and social care, that not only meets the requirements of bail but are also in the interests of the child wherever possible.
- vi. There will be occasions where the consideration is to issue conditions that would prevent the child from returning to their family home/place of care. This should only be considered in the most serious of cases where there is no defensible argument for the Police, Youth Justice services and Children's Social Care Services to work together to safeguard the welfare of the child, of those at the address and of the wider public.
- vii. Social Care and Youth Justice services are likely to have a far greater understanding than the police of the care the child is receiving and the child's broader circumstances and may suggest, despite police views, that the child return to the home address/place of care. In these instances social care are accepting responsibility for the release of that child and are agreeing to manage the risk of that child being returned. This must be agreed prior to the release.
- viii. In those instances where a child is being released to an address with the agreement of social care and/or youth justice services, despite the concerns of the police, then a evidenced decision-making will be supplied to the police for inclusion on the custody record to ensure that all records are accurate interpretations of discussions, and each agency are aware of the decisions made.
- ix. Police will make the final decision regarding bail conditions.

10. Escalation, Monitoring and Review

- i. There should be appropriate challenge between Police and the Local Authority to ensure that children are only detained in custody overnight in exceptional circumstances and when it is appropriate to do so in accordance with this protocol.
- ii. Both parties shall ensure an accurate record of any escalation is kept. Where agreement cannot be reached between the relevant LA and the police in the first instance this will be raised to the Duty Inspector to liaise with the relevant LA Manager. Should agreement still not be reached then the Critical Incident Manager / Custody Chief Inspector will liaise with LA Senior manager (Head of Service). Should it be required the Force Duty Gold Officer / Custody Superintendent will liaise with LA Strategic Manager.
- iii. For the City – The Escalation Policy is for the LA practitioner (Children’s Services and YJS) that seeks to challenge a decision made by a partner agency to contact their own line manager (Operational Manager) who will seek to engage the line manager for the person whose decision is being respectfully challenged in the partner agency for the purpose of seeking resolution. If no accord is found at that level, the matter would be further escalated to the Strategic Manager (Principal Service Manager for Derby YJS and Deputy Head of Service for Children’s Social Care).
- iv. For the county, a challenge should be raised by a locality or YJS Team Manager to a Police Sargent, and if needed, Head of Service of the YJS or Locality.
- v. This protocol shall be regularly reviewed through the relevant Youth Justice Boards (YJBs), and subject to formal review a minimum of every 2 years.
- vi. All cases of children kept in custody overnight shall be reviewed through the Custody
- vii. Centred Partnership Group and reported to the relevant Youth Justice Partnership boards.

Appendix 1: Flowchart

