

Title:	Police and Criminal Evidence Act (PACE) 1984 Protocol for the Transfer of Children and Young People to Local Authority Accommodation from Police Custody to Local Authority Accommodation (PACE bed)
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INTRODUCTION

In 2017, a national “Concordat on Children in Custody” was published to reduce the number of children and young people (CYP) who are detained overnight in police stations following charge.

Darlington Borough Council is a signatory to the concordat.

It is recognised that Police cells are not a suitable place for CYP. The Police and Criminal Evidence Act 1984 requires the transfer of CYP who have been charged and denied bail to more appropriate Local Authority accommodation, with a related duty in the Children Act 1989 for Local Authorities to accept these transfers.

This guidance applies to:

- all CYP under the age of 18 (except those who have been arrested on a warrant or for breach of bail);
- and for those instances where a CYP has not been transferred to Local Authority accommodation despite Police request (in respect of whom Durham Police are seeking accommodation from Children’s Services after they have been charged subsequent to their arrest and detention at a Police Station, with an offence but denied police bail prior to appearance before the Courts).

This guidance is for Social Workers and Managers operating during office hours and also out of office hours. YOT workers, when acting as Appropriate Adults during office hours, will also be mindful of this guidance when discharging their duties.

Principles and Practice:

The concordat is based on seven key principles:

1. Wherever possible, charged CYP will be released on police bail.
2. CYP denied bail will be transferred whenever practicable.
3. Secure accommodation will be requested only when necessary.
4. Local Authorities will always accept requests for non-secure accommodation.
5. The power to detain will be transferred to the Local Authority.
6. Where a Local Authority fails to provide accommodation, it will reimburse the police.
7. Police forces will collect data on transfer.

Background Information

Following charge

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

In some cases, however, the prospect of releasing a CYP on bail may raise concerns that it would prevent justice being done, lead to further crimes or even compromise the CYP'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 CYP's release and their appearance at Court. This consideration may allay a Custody Officer's concerns.

If concerns do exist around granting the CYP their right to bail, the Custody Officer must seriously consider whether these concerns would be suitably allayed by placing conditions on the CYP's bail.

Conditional bail

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. 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.

A **Custody Officer** should consider precisely what their concerns are about releasing a CYP on bail, and make every effort to allay these concerns with conditions. It is useful to contact the YOS or the relevant Children's Services team to discuss concerns and appropriate conditions, who may be able to help enforce bail conditions.

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 CYP'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.

If, eventually, the Custody Officer decides that the right to bail, even with conditions, must be refused and the CYP 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. The guidance is based on the premise that CYP should not be kept in Police custody following charge and if they cannot go straight to Court they must be transferred to Local Authority accommodation. The requirements of PACE were

written to ensure that CYP should only continue to be detained in a Police Station after charge where it is unavoidable.

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

However, where the offence involved someone under the age of 18, if the Police wish to refuse bail, the Custody Officer must (unless one of the statutory exceptions apply) make arrangements for the CYP to be taken into the care of the Local Authority prior to appearance in Court. Depending on the circumstances of the case, this may include asking for the CYP to be accommodated in Secure Accommodation (section 25 of the Children Act 1989).

When a Local Authority receives a request from the Police to accommodate a CYP the Local Authority has an absolute duty, under the Children Act 1989, to provide this. The type of accommodation is however a matter for the Local Authority, and specific criteria would have to be met should the Police seek secure accommodation. Section 25 of the Children Act 1989 states that a Local Authority may only place a child in a secure children's home where it appears:

- (a) That –
 - (i) S/he has a history of absconding and is likely to abscond from any other description of accommodation; and
 - (ii) If s/he absconds, s/he is likely to suffer significant harm; or
- (b) That if s/he is kept in any other description of accommodation s/he is likely to injure him or herself or other persons.

Note: The Court of Appeal in *R (M) v Gateshead Council* (2006) ruled that the Police 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, regardless of whether the child is normally resident. *EWCA Civ 221* has indicated that where Local Authorities have a system to deal with such requests from Police, they have discretion about when it is appropriate to provide secure accommodation. On the basis of this judgement the continued detention of a CYP in a Police station following charge should be rare and should only occur in 'exceptional circumstances'.

This guidance is designed to ensure that the processes for considering such requests from the Police are clear. It is primarily targeted at Social Workers and Managers, Police Custody staff, and the Youth Offending Service acting in the Appropriate Adult role.

Legislative Context for Transfers:

The transfer of CYP into Local Authority care from Police custody is underpinned by the following pieces of legislation:

1. Under section 21(2)(b) of the Children Act 1989, every Local Authority must provide accommodation for CYP whom they are requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984. The Act places an absolute duty on the Local Authority to provide accommodation where it is sought by the Police.
2. Under section 38(6) of the Police and Criminal Evidence Act 1984 (which deals with the detention of arrested ‘juveniles’) a young person must be transferred to Local Authority accommodation unless the Custody Officer certifies that either:
 - a) That, by reason of such circumstances as are specified in the certificate, it is impracticable for him or her to do so; or
 - b) In the case of an arrested juvenile who has attained the age of 12 years, that no secure accommodation is available and that keeping him or her in other Local Authority accommodation would not be adequate to protect the public from serious harm from him or her.

Please Note: PACE does not define ‘impracticable’. However, it is reasonable to consider extreme weather as impracticable or when a proposed transfer would take place very late at night and the CYP would not get enough rest for a Court appearance the following morning. The CYP’s behaviour or the nature of the offence cannot be used as grounds for the Custody Officer to decide that it is impracticable to transfer the CYP to Local Authority accommodation.

Where a decision has been made for a CYP to be detained in Police custody pending a Court appearance, the reasons for this must be recorded on the custody record and the Custody Officer must complete a certificate to be produced before the Court.

Procedures to respond to Police requests under PACE

CYP granted bail prior to charge and post charge

The Police have the power to detain anyone under arrest for up to 24 hours while an offence is investigated. By the end of this period the Police must release or charge the detained person, the suspect can also be bailed to return to the Police station at a future date, while investigations continue.

In this event the Police may ask the Local Authority to assist where they are prepared to grant bail, but there is nowhere suitable or safe for the CYP to return to (for example, a CYP who has assaulted a parent, who cannot then return to that parent’s care).

In these circumstances the Social Worker should make enquiries and take steps to encourage the parents, family members and any other connected persons to acquire an informal family or other arrangement that is safe and meets the welfare needs of the CYP concerned. In some circumstances it may be necessary to consider accommodating the CYP under section

20 the Children Act 1989 but only if no alternative course is practicable and subject to the statutory requirements of parental consent.

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

The Police and Criminal Evidence Act is very clear about the criteria required for the police to justify the request of secure accommodation. The CYP must be 12 years or older and the Custody Officer must believe that this CYP poses a risk of serious harm to the public between being charged and appearing at Court. This is a very high threshold for a CYP to meet.

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. Appropriate Adults should try to understand the Custody Officer's concerns. However, if they are not convinced that the CYP genuinely poses this high and threatening level of risk, they should make representations for the request of non-secure accommodation instead. 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.

In this situation, this is a request for transfer to Local Authority accommodation under section 38 of PACE. Such accommodation may or may not be welfare 'secure' depending on the needs of the CYP. During the period the CYP is in accommodation, they are regarded as under arrest, and may be detained in that accommodation under PACE S38 (6), or if they meet the criteria for section 25 of the Children Act, they may be detained in a secure children's home.

Please Note: under Section 18(6b) of PACE where an arrested 'juvenile' is moved to Local Authority accommodation under subsection 6, it is lawful for any person acting on behalf of the Local Authority to detain them. The CYP is still considered to be in custody following transfer to the Local Authority. If the CYP were to abscond from placement the Police would need to be contacted as escape from lawful custody is a criminal offence.

It is important to understand the basis on which the Custody Officer should decide whether to refuse or grant bail.

PACE specifies that a CYP may be refused bail and continue to be detained following charge if the Custody Officer believes:

- The person would fail to appear in Court
- The person would commit further offences.
- It is necessary for their own protection.
- It is necessary to prevent interference with justice/investigation
- Or if there is doubt about their identity/name and address.

In addition a CYP may be detained:

- If the Custody Officer believes the CYP ought to be detained as it would be in their own interests.

If the Custody Sergeant is refusing bail, having arrested the CYP on a warrant for failure to surrender to bail, or for breach of bail conditions, the Police may detain the CYP overnight at the Police station for appearance at the next available Court hearing.

Exploring the type of accommodation requested and why

If the Custody Officer is refusing bail and wishes to transfer the CYP to Local Authority accommodation under section 38 of PACE, the issue becomes what sort of accommodation is being requested, whether such accommodation is available, and whether it is practical to move the CYP to that accommodation. PACE places a responsibility on the Police to ensure the arrested CYP is moved to Local Authority Accommodation.

The Local Authority accommodation options are:

- To explore a connected care placement with a family member or connected person. If a placement with relatives or a connected person is being considered it is important that those responsible understand that the CYP is under arrest and if they abscond from placement the Police should be contacted.
- A foster placement.
- A residential children's home
- To consider secure accommodation if the criteria is met, and a secure bed is available.

i) Criteria for transfer to Local Authority Secure Accommodation

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

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

- (a) That - (i) s/he has a history of absconding and is likely to abscond from any other description of accommodation; and (ii) if s/he absconds, s/he is likely to suffer significant harm; or
- (b) That if s/he is kept in any other description of accommodation s/he is likely to injure him or herself or other persons.

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 CYP poses a risk of serious harm to the public between transfer and their Court appearance. 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.

Should there be a disagreement between the Local Authority and the Custody Officer, both agencies should escalate their concerns through their own processes. The Police have an escalation process in place which they will follow. For Children's Social Care, the Social Worker should escalate to their Team Manager, who will escalate to their Service Manager, then to their Head of Service and to the Assistant Director until a resolve is reached.

Following a request for secure accommodation, the Local Authority must do everything within its power to find secure accommodation for the CYP 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 CYP, then Custody Officers will have no choice but to retain the CYP in Police custody for the protection of the public.

ii) Relevant to Local Authority to assist where bail can be granted

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

In these circumstances the Social Worker should make enquiries and take steps to encourage the parents, family members and any other connected persons to acquire an informal family or other arrangement that is safe and meets the welfare needs of the CYP concerned. In some circumstances it may be necessary to consider accommodating the CYP under the provisions of Section 20 of the Children Act but only if no alternative course is practicable and subject to the statutory requirements of parental consent.

Where the young person is to be accommodated outside of a connected care placement, a short report should be prepared to give to the carer/s, detailing background information about the case, any bail restrictions that may be imposed, and details of when the CYP is to be returned to Court.

iii) Issues for the Social Worker to consider when assessing the CYP

When undertaking their assessment of the CYP and assessing the options to provide accommodation the following factors should be considered:

- a) The length of time before the CYP is to appear in Court, and time taken to identify an available placement. There are few secure units available locally and suitable placements can be difficult to source in an emergency. It is unlikely to be in the CYP's interests to spend most of the intervening time in a Police car rather than asleep at a Police station.
- b) The potential vulnerability of and the risks posed by the CYP. The Social Worker should assess the CYP's emotional wellbeing and any potential emotional vulnerability the CYP may experience while in Police Custody. An assessment of the risks posed

by the CYP to specific individuals and the public should also be considered. In undertaking this assessment they should take account of the views where appropriate of the Custody Officer, Officer in the case, custody medical staff, legal representative, Appropriate Adult, YOS if not acting as an Appropriate Adult, and parent/carer. If any doubt exists the Social Worker should see the CYP at the Police Station to form their own view.

- c) In general, the younger the CYP, or the longer the period before Court, the more likely it would be that a transfer to accommodation should be arranged to avoid detention in Police custody.
- d) The wishes and feelings of the CYP should also be considered if appropriate.

If the Social Worker assesses that a transfer to secure accommodation or other placement could be appropriate, they should:

- Contact a Head of Service for permission to proceed with accommodating the CYP and transfer.
- Identify a suitable placement with approval from a Head of Service.
- If a placement or secure bed is available, a Head of Service will be required to approve the provision. The placement will then be confirmed with the Custody Sergeant, who will advise if the Police are able to transport the CYP to that placement and if yes confirm the placement with the provider. If the Police are unable to provide transport, the Social Worker will need to source other transport arrangements wherever possible.

iv) Role of the Social Worker where the CYP remains in the Police Station

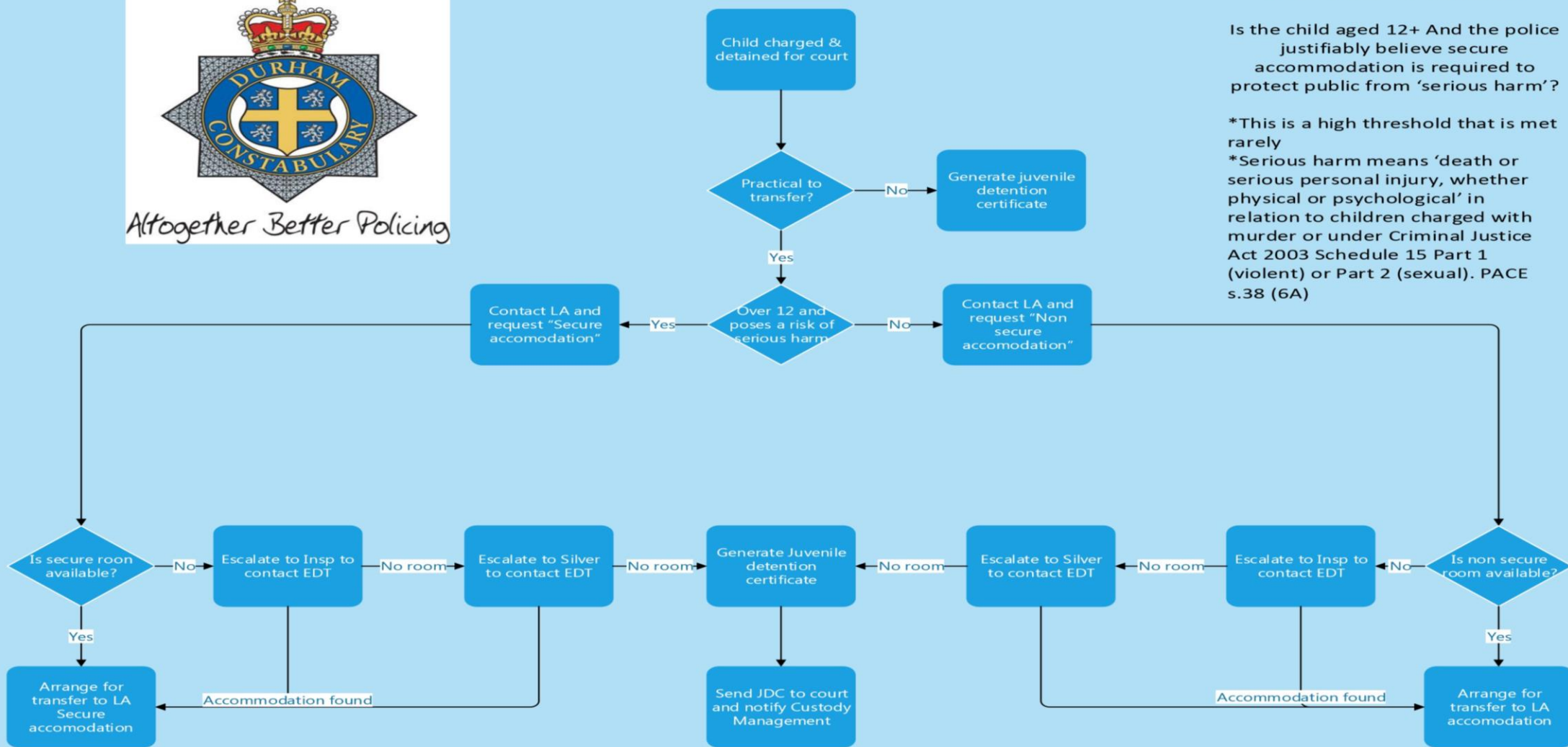
If the CYP needs to remain in custody the Social Worker should ensure an assessment is completed on the vulnerability of the CYP. This is particularly important if the CYP will be in custody more than 24 hours before appearing in Court. A decision that the CYP should remain in the Police Station is the responsibility of the Custody Officer and can only be authorised on the statutory grounds previously mentioned and certified accordingly.

v) Other Matters-Dealing with CYP from other arrears

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

In this situation every effort should be made by the Police to contact the home Local Authority or Emergency Duty Team to facilitate any requests to accommodate the CYP under PACE. However the decision to accommodate and meet the costs of this must rest with the home Local Authority.

Children and young person remand accommodation process



Secure accommodation

Is the child aged 12+ And the police justifiably believe secure accommodation is required to protect public from 'serious harm'?

*This is a high threshold that is met rarely

*Serious harm means 'death or serious personal injury, whether physical or psychological' in relation to children charged with murder or under Criminal Justice Act 2003 Schedule 15 Part 1 (violent) or Part 2 (sexual). PACE s.38 (6A)

Post Transfer FAQ for Placement Provider

What paperwork will I receive from the Police?

A Prisoner Escort Record (PER) will accompany all detainees; this lists their personal details, property, offence, Court of appearance and risks. You may also receive a sealed envelope with medical forms.

What about the child's property?

There may be one or more sealed bags of property with the CYP. The Police would recommend that this is left sealed and is placed into safe storage and accompanies the CYP to Court the next day. This is because when the PER is completed all property is detailed on it and sealed with tamper evident tags which would need to be changed and logged on the PER if opened.

Do I need to write anything on the PER form?

Significant events during the CYP's stay with you should be recorded such as medical interventions, adverse incidents and the fact that they have received or been offered meals and drinks.

What if the CYP leaves the home?

The CYP is classed as a person remanded and is to be placed before the next Court, they are technically detained by the carers providing the placement as they would be in Police custody, and hence if they leave the custody of the placement they can be classed as having escaped from Lawful Custody. The carer should immediately contact the Duty Inspector for the area and Police Control room via 101. The CYP will then be circulated as wanted and is liable to arrest for escaping Lawful Custody.

What if the child requires medical attention?

You should follow your normal processes within the placement.

What happens the next morning?

The CYP must be taken to the Court stated on the PER form along with any property and the updated PER form. Please contact the Court Cell complex after 7am to discuss what time the detainee will arrive.

What are the numbers for the Court cells?

Peterlee Magistrates Court 0145 4288413

Newton Aycliffe Magistrates Court 0145 4288398

What do I do if I have a question around the process or the CYP's welfare?

Please contact the Police Custody that the CYP came from, the direct number will be on the PER form. If they are unable to help contact the Duty Response Inspector for the Custody Suite concerned.