

Corporate Parenting Panel

21 October 2022

Transfer of Young People from Police Custody to Local Authority Accommodation under Police & Criminal Evidence Act 1984



Report of Dave Summers, County Durham Youth Justice Service Manager

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 This report provides an update on the work undertaken to refresh the procedures and approach to the transfer of young people, charged by Police and detained pending court, within County Durham. This work has been undertaken alongside colleagues from Durham Constabulary, Children's Social Care and Aycliffe Secure Children's Home (SCH).

Executive summary

- 2 The Police and Criminal Evidence Act 1984 requires the transfer of children who have been charged and denied bail, pending their first court hearing, to more appropriate Local Authority accommodation, with a related duty in the Children Act 1989 for Local Authorities to accept these transfers. Section 11 of the Children Act 2004 requires both police and Local Authorities to have regard to the welfare and protection of children, and in 1991 the UK ratified the UN Convention on the Rights of the Child, agreeing that custody be used "only as a measure of last resort and for the shortest appropriate period of time".
- 3 As is evident, this duty has been required of the Police and Local Authority for many years, however, nationally, there was a considerably varied approach to meeting these demands and they were ignored in most areas of the country. However, in County Durham, the first protocol between DCC and Durham Constabulary was agreed and enacted in 2002, which placed County Durham in the forefront of practice in this area. In 2014, in an effort to improve practice across the country, the Home Office published '*A Concordat on Children in Custody: Preventing the Detention of Children in Police Stations*'

Following Charge' which sought, through explicit principles, aims and processes, to ensure consistent and improved practice. Both Durham Constabulary and DCC are signatories to this concordat.

- 4 In County Durham, the procedures were, initially, well used in appropriate circumstances, however, over the last few years their use declined, resulting in young people being detained in police stations rather than being held in more appropriate accommodation. As a result, it was agreed, in autumn 2021, that the procedures would be reviewed, refreshed and re-launched.
- 5 Between January 2020 and November 2021, Durham Constabulary made eight requests to DCC for the transfer of young people under our procedures. Two of those requests were met by DCC, the remaining young people being held in police custody until their court hearing. Since November 2021, and the work to refresh the procedures, there have been 28 requests made by Police and 20 have resulted in an agreement as to appropriate accommodation.

Recommendations

- 6 Corporate Parenting Panel is recommended to:
 - (a) Note the content of this report
 - (b) Receive further updates annually.

Background

- 7 Under the Police and Criminal Evidence Act 1984, the detention of a child in Police custody, after charge and whilst awaiting their first court hearing, is permissible only where exceptional circumstances prevent movement (such as extreme weather conditions) or where the child is deemed to pose a risk of serious harm to the public between being charged and appearing at court and no Local Authority secure accommodation is available.
- 8 Once a Custody Officer has determined that a child is to be charged and detained pending their appearance at court, they must decide whether the child poses 'an imminent risk of serious harm to the public'. If it is decided this applies to the child, then they must request the Local Authority accommodate the child, until the court hearing, in secure accommodation. If the Local Authority is unable to identify any available secure accommodation (or it is 'impracticable' to transfer), then the Police may detain the child in Police custody. If the Custody Officer decides that the child does not pose an imminent risk of serious harm, then they must request the Local Authority accommodate the child in 'none-secure accommodation'.
- 9 As mentioned above, compliance with the procedures was poor and it appeared that in many of these cases the failure to comply with stemmed from confusion as to its requirements. Custody officers were often not clear as to whether they should request secure accommodation or not, and sometimes interpreted the Police and Criminal Evidence Act's use of the term 'impracticable' as meaning 'difficult' or 'inconvenient'. Local Authority staff were often not aware of their absolute legal duty to provide accommodation and often believe that a lack of available space in children's homes justified leaving a child in a police cell.
- 10 A small working group was formed comprising of managers from Police, CDYJS, Emergency Duty Team and Aycliffe SCH to review the procedures in County Durham and to consider any amendments required and re-launch. Agreements between Durham Constabulary and DCC were 're-visited' and it was ensured that all parties understood the statutory requirements placed upon them. Joint training and shared management meetings between all parties have either been held, or are planned, and there is now joint monitoring of performance by all services. Where practice in individual cases is identified as falling outside of procedures, the aforementioned group of managers will consider the issues and respond accordingly.

Conclusion

- 11 Whilst County Durham was for many years at the forefront of practice in the transfer of young people after charge, over recent years practice had slipped, and the majority of young people were being held in police custody with no consideration for transfer to local authority accommodation. However, performance over the last 12 months has improved considerably and there is now greater common purpose and understanding between agencies. This has been reflected in increased numbers of referrals to DCC, improved practice and a shared approach between operational staff. This is something that will require sustained monitoring and management, especially given the relatively small numbers of young people these procedures apply to.

Background papers

- <https://www.gov.uk/government/publications/concordat-on-children-in-custody>

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Appendix 1: Implications

Legal Implications

Transfer of young people under PACE Act 1984 and Children Act 1989 is a statutory duty of both Durham Constabulary & DCC

Finance

None

Consultation

None

Equality and Diversity / Public Sector Equality Duty

None

Climate Change

None

Human Rights

None

Crime and Disorder

The duty to transfer young people is based upon the duty to prevent crime and disorder.

Staffing

None

Accommodation

The duty requires the Local Authority to provide both secure accommodation and none-secure accommodation.

Risk

None

Procurement

None