



CONCORDAT ON CHILDREN IN CUSTODY

Preventing the detention of children
in police stations following charge

Merseyside Region Local Arrangements June 2020



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Introduction - As per National Concordat

A night in a cell is an intimidating experience. Police custody facilities are designed to detain adults suspected of criminal activity, and they offer little in the way of comfort or emotional reassurance. For a child – especially one deprived of familial support – a prolonged stay in this environment can be harmful.

Children brought into custody are in a particularly vulnerable position; not only by virtue of their age, but also because of the circumstances which brought them into contact with the police. They may be under the influence of drugs or alcohol, recovering from a recent trauma or coming to terms with events that may have a lasting impact on their lives. Judged even against the reduced capability of a child, they will not be in a strong position to cope with the stressful and demanding nature of a night in custody.

The law already recognises that police cells are not a suitable place for children. The Police and Criminal Evidence Act 1984 requires the transfer of children 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. 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”.

Despite this, failings have been identified by Her Majesty’s Inspectorate of the Constabulary (*The welfare of vulnerable people in custody*, March 2015), the All Party Parliamentary Group for Children (*“It’s all about trust”: Building good relationships between children and the police*, October 2014), the Criminal Justice Joint Inspection and the Inspection of Youth Offending (*Who’s looking out for the children?: A joint inspection of Appropriate Adult provision and children in detention after charge*, December 2011) and the Howard League for Penal Reform (*The overnight detention of children in police cells*, 2011). It is clear that, in many cases, the law is not being followed and children are not receiving the support to which the law entitles them.

The National Concordat recognises that that we must work together to ensure that legal duties are met. This document clarifies the local arrangements that underpin the National Document and acknowledges that the National Document as the primary document providing detailed information required for practitioners.

Merseyside Local Authorities and the Merseyside Police have worked together to devise local arrangements and governance to ensure that justice is done and that the public is protected, but to ensure that it is done humanely and in full accordance with the law.

This local arrangements document sets out clearly, and with the agreement of those involved - the role that each should play to ensure that this responsibility is fulfilled.

The following organisations have worked together in partnership to develop, endorse and adopt the principles described in this concordat.



Merseyside Police and the five Local Authorities have become signatories to commit to adopting and implementing the Concordats principles and practices. They will work together to ensure that transfers always happen as they should.

Purpose and principles

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. For the purpose of this Merseyside agreement the Local Authority for the Custody Sergeant to contact will be as follows

- A) The Local Authority where the child resides, if confirmed the child lives within the Merseyside Area.
- B) If the child's address is not able to be obtained, the Local Authority which covers the custody suite where the child has been detained
- C) For a child accommodated outside of the Merseyside Area, the Local Authority which covers the custody suite where the child has been detained

In cases B and C it is the responsibility of that LA to ensure arrangements are made with the responsible authority in due course.

The following principles are taken from the National Concordat and provide a useful summary

- 1. Whenever possible, charged children will be released on bail**
- 2. Children 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 transfers**

The following sections provide local direction under each principle.

Principles and local practice

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

After a child has been charged, there is a presumption that they will be granted bail. 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. A full list of possible reasons for denying the right to bail 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 - the custody officer must seriously consider whether these concerns would be suitably allayed by placing conditions on the child's bail.

Role of the Custody Sergeant

- Will consider precisely what their concerns are about releasing a child on bail, and make every effort to allay these concerns with conditions.
- Will consult with the Appropriate Adult, Social Services, and Youth Offending Service to explore whether the concerns could be alleviated by the imposition of bail conditions.
- If right to bail is refused complete a written record under section 38 (3) of the Police and Criminal Evidence Act 1984. This written record will be scrutinised in court.

2. Children denied bail will be transferred whenever practicable

After a child is charged with an offence, custody officers have a duty under the Police and Criminal Evidence Act (PACE) to secure the transfer of the arrested child to local authority accommodation; local authorities have a duty to accommodate the child under the Children Act 1989.

PACE allows police to retain a child in custody where a transfer is impracticable – where exceptional circumstances render the movement of the child impossible. 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.

The role of the Custody Sergeant

- Make a decision as to whether “secure” or “non-secure” accommodation is required and document rationale on the custody record.
- Contact the relevant Local Authority and explain the circumstances behind the request for either secure or non-secure accommodation. See 3 and 4 regarding information exchange.
- Secure the transfer to LA accommodation – this means to contact the relevant Local Authority to secure the transfer to LA accommodation – this does not mean to physically arrange for a police transfer to the LA accommodation – this is the responsibility of the LA.
- If transfer is impracticable to ensure this situation is raised and supported by Custody Inspector.

A Local agreement has been reached whereby there will be no cut off times for requests to the LA for overnight accommodation and that each case will be judged on its merits – considerations may include the practicalities of transfer v appropriate rest before court appearance.

3. Secure accommodation will be requested only when necessary

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: to say that a child poses a risk of serious harm means that they are likely to cause death or serious injury (whether physical or psychological) to members of the public.

The custody officer will give the local authority the following information:

1. The child's personal information, including details of any vulnerabilities;
2. The nature of the offence;
3. An explanation as to why the child poses a risk of death or serious injury to the public.

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:

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

The role of the Custody Sergeant

- Seek approval from Custody Inspector over the request for Secure accommodation
- Provide the information outlined in 1, 2 & 3 above to the LA
- Document the information as 1, 2 & 3 provided to the LA within the Custody Record
- Ensure details of the individuals spoken with and their position/role are documented. It is important that lines of communication are clearly established and an understanding as to who is making the request, who is making the decisions and the roles of those involved.
- If the request was not supported by the LA escalate to Duty Custody Inspector
- If still not supported ensure full record of conversations are recorded and complete PCE 38(7) outlining why bail has been denied and why secure accommodation was not provided.

The role of the LA

The role of the Local Authority is clearly documented within the National Concordat, please refer to primary document.

As per the role of the Custody Sergeant it is vitally important that the LA records all efforts to identify secure accommodation and keep the Custody Sergeant informed at regular intervals. If the decision is that secure accommodation cannot be found or is not appropriate (for example due to timings / location) then full details to be passed to the Custody Sergeant to document on the PACE 38 (7) certificate for the courts.

Secure accommodation can be identified via the Secure Welfare Coordination Unit on 01962 846432 (a voice machine message will detail all available accommodation outside of working hours) or the Youth Custody Service 0345 3636363. It is the responsibility of the LA to contact the individual accommodation providers to establish if they are willing to accept the child.

The Local Authority will speak with Duty Manager in detail regarding the referral and will provide information regarding risk and vulnerabilities with regard to the child referred. The Duty Manager will make a decision based upon the risk factors which will include risk to others. If confirmed, it is the responsibility of the Local Authority to make arrangements for the child to be moved to secure accommodation from Police Custody. The Local Authority are also responsible for ensuring the transit of the young person to court. The LA undertakes the liability for the overnight placement costs and the subsequent escort costs.

4. Local authorities will always accept requests for non-secure accommodation

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 (death or serious injury, whether physical or psychological) to the public.

The custody officer will provide local authority staff with the following information:

1. The child's personal information, including details of any vulnerabilities;
2. The nature of the offence;
3. 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. Note that a conversation with the LA may result in the Custody Sergeant reviewing whether there are other conditions not previously thought of which may allay fears and as such negate the request for accommodation.

The role of the Custody Sergeant

- Provide the information outlined in 1, 2 & 3 above to the LA
- Document the information as 1, 2 & 3 provided to the LA within the Custody Record
- Ensure details of the individuals spoken with and their position/role are documented
- Detail the conversation had with the LA regarding the request
- If request not supported by the LA escalate to Duty Custody Inspector

- If still not supported ensure full record of conversations recorded and complete PCE 38(7) outlining why bail has been denied and why non-secure accommodation was not provided.

The role of the Local Authority

- It is up to the Local Authority to determine the most appropriate type of non-secure accommodation for the child.
- The transferring of a child to suitable LA accommodation is the responsibility of the Local Authority.
- At the point of transfer from Police to the Local Authority, the power to detain passes to the Local Authority.

5. The power to detain will be transferred to the local authority

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)

The above applies in the case of transfer to both secure and non-secure accommodation.

The national Concordat contains wording to be used when releasing a child from a police station to the custody of the Local Authority – this wording will be further developed to make it clear to the child that the offence of escaping lawful custody will be committed if they abscond from LA accommodation from the point of transfer from the Police Station to their appearance in Court.

6. Where a local authority fails to provide accommodation it will reimburse the police

The police are not funded to accommodate under-18 year olds in custody. The National Concordat states that it is therefore important that local police forces are reimbursed when a transfer to local authority care does not take place, for whatever reason.

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.

Merseyside Police have made a decision that whilst a charging structure can be put in place similar to that utilised for immigration detainees it will not as a matter of course charge Local Authorities. The current position is that Merseyside Police will escalate such cases to the Local Authority and will expect the LA to review and look to address where a deficiency in provision has been identified. This position will be subject to regular review.

7. Police forces will collect data on transfers

The National Concordat states that Police Forces will collect data on the following

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

In addition to the above qualitative data the following information will also be reviewed:

- Do requests for secure accommodation withstand scrutiny?
- Are there any examples of transfer being impracticable? What are the reasons and does this withstand scrutiny.
- Is Information provided to the LA from the Police Custody sufficient to make effective decisions?
- Are cases being escalated appropriately and are cases then being resolved?
- What are the blockages? What work is taking place to address?

The next section on Governance contains additional information.

Governance

As per principle 7 Police Forces will collect data both quantitative and qualitative- it is important that this data is effectively shared with Local Authorities and relevant partners to inform effective working relationships and with Local Safeguarding Children's Boards to enable them to hold local agencies to account in respect of complying with their statutory duties.

The Merseyside Region already have in place a governance structure which can provide the scrutiny required to ensure compliance with legislation, the National Concordat and Local arrangement – this is the “Multi Agency Panel for the Scrutiny of Children in Police Custody”. The Panel's purpose is as follows

- 1) Support Police Forces and Local Authorities in complying with their statutory responsibilities with regard to children in custody.
- 2) Bring about a decrease in the numbers of children held overnight in police detention.
- 3) To ensure transparency and public confidence in the application of policies by the Police and Local Authorities.

The terms of reference include the following

- To address the necessity for the arrest of children and the timings of the same
- To identify the reasons why children are detained in custody without being bailed
- To assist the Merseyside Local Safeguarding Children's Partnerships to gain an improved understanding of the reasons for requiring secure accommodation and any issues with its provision.
- To highlight any areas for improvement to the Merseyside LSCBs and Merseyside Criminal Justice Board.

This will be expanded to include the following

- Monitor compliance with the National Concordat on Children in Custody and review data both quantitative and qualitative as per principle 7 of Local Arrangements.

Representation at that forum will include

- Representatives from within Merseyside's Local Safeguarding Children's Partnerships
- EDT Service Managers
- YOS Senior Manager or Head of Service representing all Merseyside YOS
- Merseyside MCJB Representative
- ICV Representative
- Merseyside Police Custody Representative – Inspector and above
- Merseyside Criminal Justice and Mental Health Youth Nurse

The Panel have committed to meet on a bi monthly basis and a report will be submitted to all five local safeguarding children's partnerships by the chair and MCJB at a minimum 6 monthly basis. Data will also be presented at the Regional Children and Young Person's Meeting chaired by a designated ACC. Any cases identified where there is a shortfall in service provision that is presenting a risk to children and yond people will be raised by the Chair of the Youth Scrutiny Panel to the relevant strategic lead.

Contacts

Social Care Services

Authority	Telephone Number
Wirral	0151 606 2006
Sefton	0151 934 3737
Knowsley	0151 443 2600
St Helens	01744 676767
Liverpool	0151 233 3700

Emergency Duty Teams - Contact Numbers

Authority	Telephone Number
Wirral	0151 677 6557 cypdedt@wirral.gov.uk
Sefton	0151 934 3555 – EDT Pager Service
Knowsley	0151 433 2600 EDT Edtclaimandadmin@knowsley.gov.uk
St Helens	0345 050 0148 EDT
Liverpool	0151 233 3800

Day Escalations

Authority	Telephone Number
Wirral	Kathy Gill for all YOT, AA and Court matters 07557135880 or 0151 666 3466. Debbie Prescott or Wendy Monnelly for Accommodation and all other issues on 0151 606 2006
Sefton	Laura knights Interim Head of Children’s Social Care 0151 934 3935 / 07970133806 Julie Bucknall Service manager 0151 934 2536
Knowsley	Tracey Overs Head of Service Children’s Social Care, 0151 443 4260 Peter Murphy Assistant Executive Director Children’s Social Care 0151 443 5655
St Helens	Joanne Bibby Head of Service (Front Door, MASH, EDT) - 01744 675634 Linda Evans Senior Assistant Director - Social Work and Community - 01744 671028

Liverpool	Bernie Brown Assistant Director Children's Social Care 0151 233 0479.
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Custody

Custody Suite	Telephone Number
Wirral	0151 777 2750
Copy Lane - Sefton	0151 777 3150
St Helens	0151 777 6850
St Anne Street – Liverpool	0151 777 4850

Youth Offending Services	Telephone Number
Wirral	0151 666 3466
Sefton	0151 934 2565
Knowsley	0151 443 3079
St Helens	01744 677 990
Liverpool	0151 233 0693

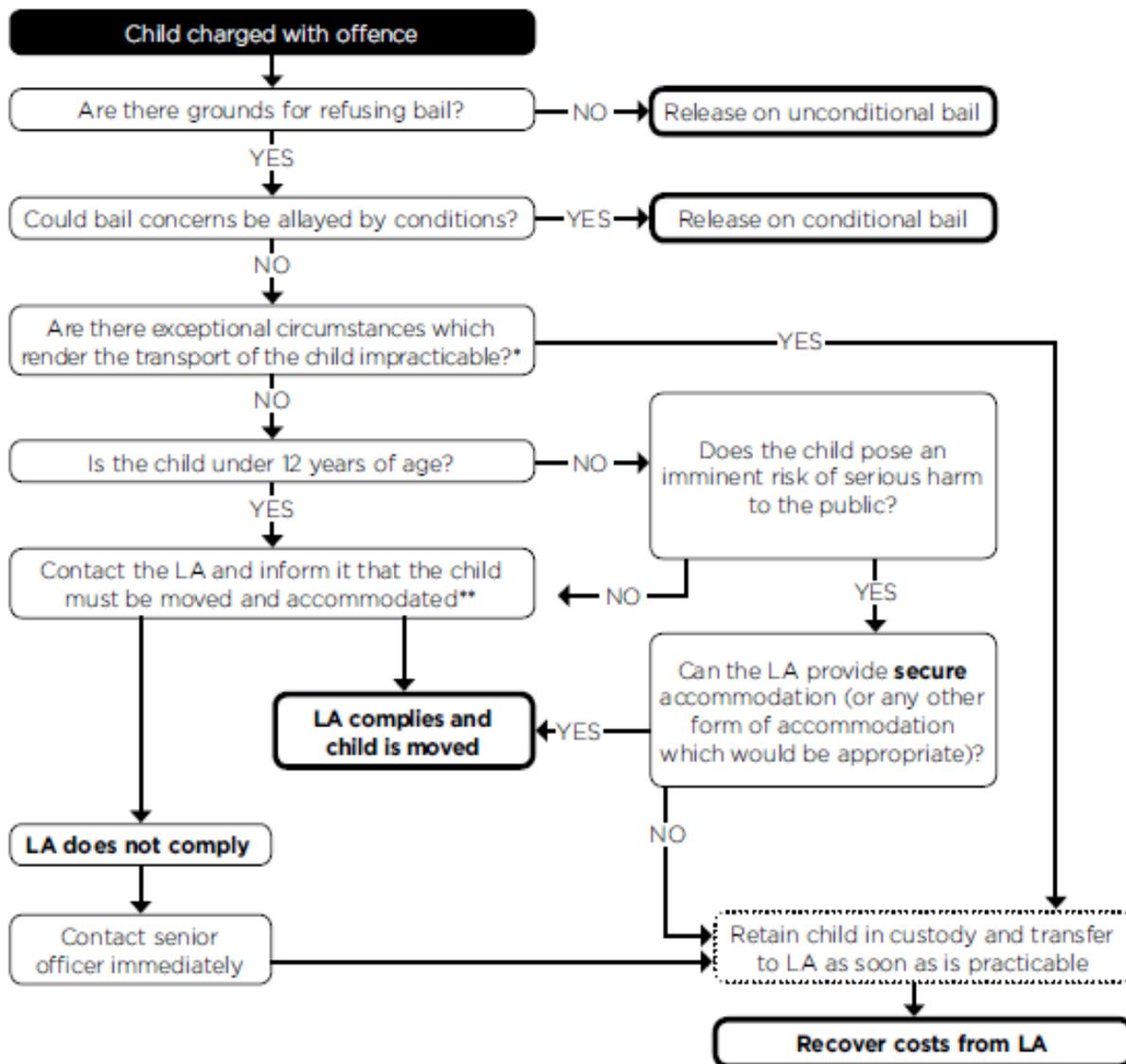
Signatories

The National Draft Concordat of Children in Custody has been signed by Merseyside Police at Assistant Chief Constable Level and also by the Directors of Children's Services of each Local Authority. The signatories of the Local Arrangement include the original signatories and are extended to the Departmental Heads for each LA responsible for the provision of the service.

	Director of Children's Services	Signature
Wirral Metropolitan Borough Council	Paul Boyce	
Sefton Council	Vicky Buchanan	
Knowsley Metropolitan Borough Council	Colette Dutton	
St Helens Council	Sarah O'Brien	
Liverpool City Council	Steve Reddy	
Merseyside Police	Assistant Chief Constable ACC John Roy	
Merseyside Police	Criminal Justice Custody Lead Superintendent Nick Gunatilleke	

Police process for children in custody

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

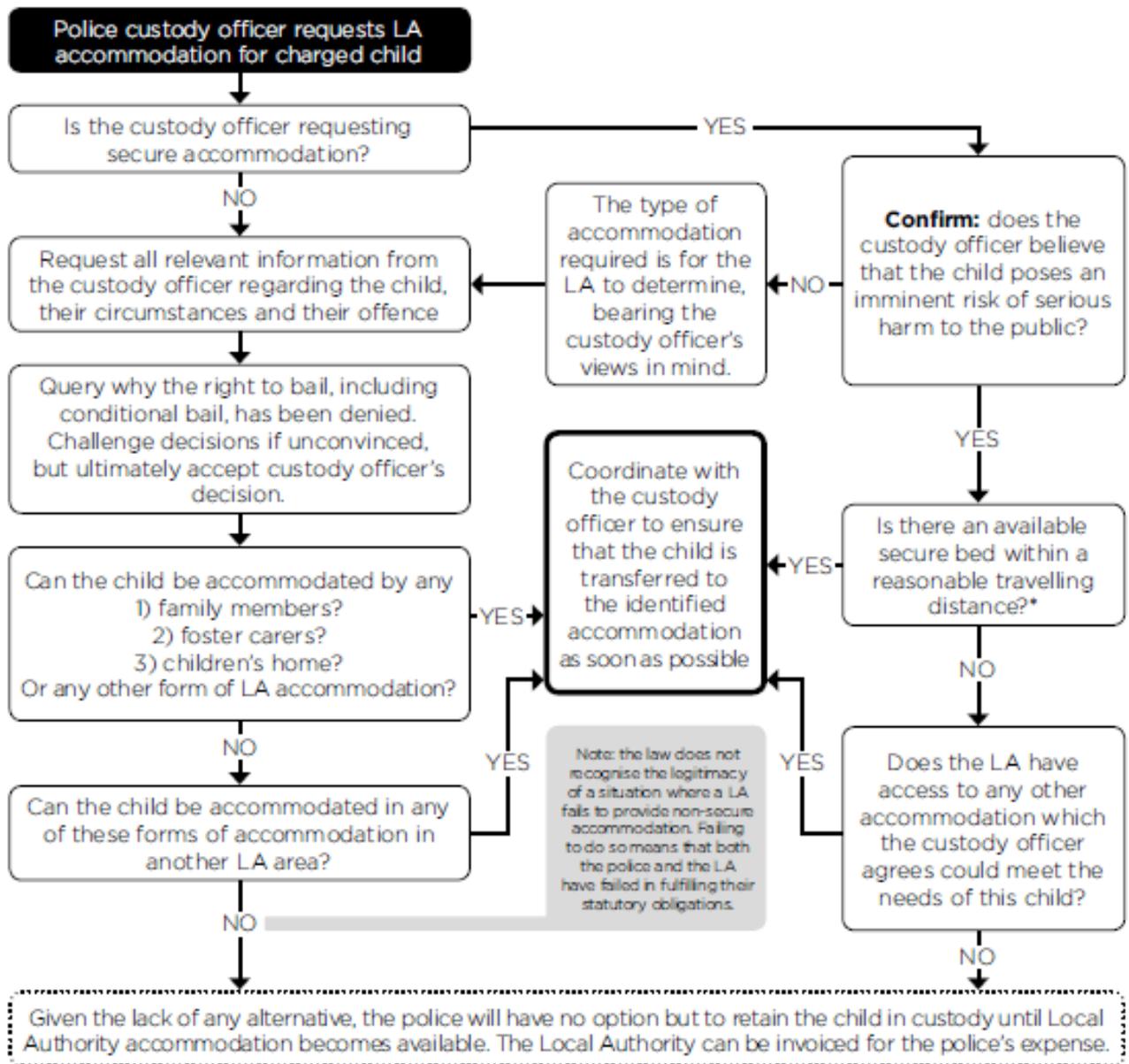


* Circumstances which would render transfer impracticable do not include the availability of Local Authority accommodation, the nature of accommodation offered by the Local Authority, the child's behaviour, nature of offence, or the availability of transport.

** Custody officers should ensure that the Local Authority is provided with all relevant information about the child and the offence for which they are charged, including reasons for the denial of bail.

Local Authority process for transfer of children from police custody

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



* A reasonable travelling distance would be one which allows the child to be transferred without preventing them having a sensible amount of sleep in advance of their court appearance.