THE ROLE & RESPONSIBILITIES OF THE APPROPRIATE ADULT

1. Acting as an appropriate adult
As part of your duties you may be required to act as an appropriate adult and be present at:

   i. Questioning by police
   ii. When photographs, fingerprints and samples are taken, or
   iii. when a young person is reprimanded bailed or charged.

This section gives appropriate advice and guidance to assist you to fulfil this role.

1.1 Introduction
This procedural advice and guidance has been produced in order to promote good and consistent practice regarding the response to a request from the police, for an appropriate adult, during the detention and questioning of children and young people under the age of 17. (Where the term child or young person is used in this procedure it relates to those aged ten up until their seventeenth birthday).

Juveniles - Persons aged 17 years

- 17 year olds
  - will
  - are regarded as adults for PACE
  - but are
  - regarded as young persons for the purpose of:
    - non association with charged adults (except relatives and co-defendants)
    - whilst detained at the police station
    - whilst being taken to and from court
    - whilst waiting before or after attending a criminal court

This procedure takes account of the Police and Criminal Evidence Act 1984 and the associated Codes of Practice, the National Standards for Youth Justice and related legislation and guidance. (Note that Section 2 covers separate procedures in relation to

Appropriate Adult
Detained Children and Young People, Release or Continued Detention, which covers, police bail, the detention of juveniles, their transfer to accommodation and the role of the responsible adult).

The Police and Criminal Evidence Act (1984) [commonly referred to as PACE] aims to provide a wide range of safeguards for suspects during arrest, detention and questioning at the police station. Some of these safeguards are in relation to vulnerable groups such as juveniles (aged 10-16), and people of any age with a mental disorder. These groups require an “Appropriate Adult”, and this guidance aims to summarise the duties and responsibilities of Youth Offending Service staff whilst undertaking this role.

The statutory framework surrounding detained juveniles arises from legislation that includes:

- Children and Young Person's Act 1933;
- Police and Criminal Evidence Act 1984 (PACE);
- PACE Codes of Practice (revised 1995);
- Children Act 1989;
- Criminal Justice Act 1991;
- Criminal Justice and Public Order Act 1994; and

In accordance with Section 34(2) of the CYPA 1933 (as amended by s57 of the Police and Criminal Evidence Act 1984) when a juvenile is in police detention practicable steps must be taken to inform a person responsible for their welfare. In addition to the parent or guardian this may be any other person who has for the time being assumed responsibility for their welfare. The police must also inform the supervisor of someone subject to a supervision order made under s11 of the CYPA 1969.

In the case of a juvenile, ‘the appropriate adult’ means:

- his parent or guardian (or, if he is in care, the care authority or voluntary organisation);
- a social worker, or
- failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the police.

The Youth Offending Service (YOS) normally provides an appropriate adult service between 8.30 a.m. and 5 p.m. Monday to Friday. Where YOS staff have already started dealing with a case they will continue until 6 p.m. Outside of these hours and on Bank Holidays, the provision of appropriate adult is through the emergency duty team.

This procedure applies to all staff, volunteers, and foster carers who act as an appropriate adult on behalf of the YOS or the local authority; those acting in the role of appropriate adult (on behalf of the YOS or the local authority) will be trained and supported in this role.

The Children's Legal Centre has described the role and drawn a distinction between the role of the appropriate adult and the role of the lawyer.

“The appropriate adult’s main concern is not the guilt or innocence of the young person but her/his physical and emotional welfare. This can be contrasted with the role of the solicitor whose duty is to give legal advice and information”.

Appropriate Adult
Where someone over 17 is vulnerable due to being viewed as *mentally disordered* or *mentally handicapped* they are also entitled to an appropriate adult. Whilst there are significant similarities in the role of an appropriate adult acting in these circumstances there are also distinct differences.

**This procedure does not cover acting as an appropriate adult in relation to vulnerable people aged over 17.** (A summary of provisions relating to this group is at Annex E to Code C in the Codes of Practice).

1.2 **Policy**

Where parents or another responsible adult are unable or unwilling to act as the appropriate adult the YOS will provide an appropriate adult.

The role of the appropriate adult requires that in order to promote the best interests of the young person, in limited circumstance, the appropriate adult may need to take actions that do not concur with the child/young persons wishes, in particular where legal advice or medical matters are concerned.

Anyone acting in the role of appropriate adult on behalf of the YOS will be trained and experienced in the role.

In all cases a written record will be kept using the PACE Log Form and any supplementary notes as required.

We will strive to meet the relevant National Standards for this area of work.

1.3 **Rights of Detained Juveniles**

A juvenile has the right to have someone informed of her/his arrest. This is distinct from and additional to, the duty on police to notify someone responsible for the juvenile's welfare.

Once a juvenile has been detained, all practicable steps must be taken to contact her/his parent(s)/guardian and inform them of the arrest, where the juvenile is looked after (Children Act definition 1989) - the care authority should be contacted.

A juvenile may only be placed in a police cell when other forms of accommodation are not available. The reason for a cell being used must be entered in the custody record. **In no circumstances may a juvenile be placed in a cell with an adult.**

The juvenile has the right to be fed, within any 24-hour period, 2 light meals and one main meal must be made available.

Meals and drinks may be brought in from outside. (This is particularly important where a police station is not able to cater for particular dietary needs that arise as a result of medical, cultural or religious needs).

If clothing is removed for evidential purposes the juvenile must be provided with clean and comfortable clothing in replacement.

The juvenile must be provided with adequate and clean bedding together with access to washing and toilet facilities.
The juvenile is entitled to 8 hours continuous rest in any 24-hour period.

A juvenile must not be interviewed or asked to provide a written statement without an appropriate adult present. (Unless a Superintendent (or above) considers that delay will involve an immediate risk of harm to persons or serious loss of or damage to property. Once sufficient information has been obtained to avert the immediate risk, the questioning must stop. In addition a record must be made of the grounds for the decision to interview without an appropriate adult present.) Additionally an appropriate adult is required when juveniles are:

- given their rights by the custody officer;
- strip searched;
- required to submit to an intimate search;
- charged;
- take part in identification procedures; or
- are issued with a reprimand or final warning

### 1.4 Appropriate Adult Responsibilities

Key responsibilities of appropriate adults include:

- promoting the emotional and physical well being of young people;
- advising detained children or young people;
- ensuring that interviews are conducted properly and fairly; and
- facilitating communication between a child/young person and the police.

### 1.5 Key Tasks

Key tasks for the provision of appropriate adults include:

- considering relevant and available information prior to attending police station;
- ensuring that parents have been given an opportunity to attend;
- advising the custody sergeant of any known risk of self harm;
- deciding whether an appropriate adult should attend;
- checking the custody record;
- interviewing the young person and assessing their needs;
- attending the interview(s);
- attending (as appropriate) procedures that include, fingerprints, searches, charging and administration of final warnings; and
- assessing whether the young person has other needs

### 1.6 Request for an Appropriate Adult

This section of the procedures details the action to be taken when there is a request by the police for an appropriate adult.

The Custody Officer within a Police Station is responsible for the detention, treatment and welfare of people in custody and their property. The Police and Criminal Evidence Act 1984 (PACE) and the Codes of Practice made under the Act lay down stringent rules about the detention, treatment and questioning of people.

Custody Officers remain independent of any investigation and are there to ensure all prisoners are treated fairly and in accordance with the rules and procedures contained within the Codes of Practice.
The flow chart below summarise the initial action at the custody officer once he/she has decided that detention is lawful.

**Initial Action at Police Station**

1. **At Police Station arrested for an offence**
   - Inform detainee of rights
   - Give written notice of rights and entitlements.
   - Obtain signature on custody record and record if refused

2. **solicitor**
   - named person to be informed
   - In case of juvenile cannot delay

3. **If juvenile - the above procedures have to be repeated in the presence of the appropriate adult**

When a Custody Officer authorises anyone’s detention, or as soon after that they are able to understand, they should:

- tell them of their rights and entitlements;
- offer them a copy of Forms CO1.15 and CO1.40;
- ask them to sign the custody record acknowledging receipt;
- ask them if they want legal advice;
- ask them if they want someone to be told of their whereabouts;
- tell them of their right to consult the Codes of Practice;
- tell foreign nationals of their right to communicate at any time with their High Commission, Embassy or Consulate or to have them told of their whereabouts.

Once a request for an appropriate adult has been received, information needs to be collected in order that an informed decision can be made as to who should act as the appropriate adult. (Wherever practicable and appropriate this should be the child’s parent). Systematic collection of information also ensures that full information is available to the person who may act as the appropriate adult.
The information will be gained from the police, YOS/local authority records and from other sources, these may include the child’s parents, their social worker or from another YOS or local authority. The information should be recorded on the Appropriate Adult Request Form.

Outlined below are key aspects of the information gathering process.

1.7 Information from the Custody Officer

It is important that when the request for an appropriate adult, is made by the custody officer, that a range of information is collected, this includes:

- the station and officer making the request;
- time & place of arrest;
- information about the young person including name, gender, date of birth, ethnicity & spoken language;
- the reasons for their arrest/detention;
- if they are fit to interview; and
- information about their parent/carers and why they are unable to complete the role.

Establish what actions have been taken by the police to contact the young person's parents or carers. The police may be prepared to delay proceedings to allow the parent to attend, or to release the young person and question at another time. Where parents/carers cannot be contacted, the impact of delay in the provision of an appropriate adult on the welfare of the young person will need to be considered.

### Juveniles - People to be Notified

If it is practicable the Custody Officer must ascertain who is responsible for the welfare of the juvenile

- parent, guardian or person with parental responsibility
- if in care, care authority or voluntary organisation
- other person who has assumed responsibility for welfare

The person/representative must be made aware of the fact

- that the juvenile has been arrested
- why arrested
- where detained

Appropriate Adult
Notes: There are specific circumstances which can preclude a parent (or other adult) acting as an appropriate adult. These include parents estranged from the child/young person where the child/young person does not want the parent to act, and also includes circumstances where the parent may be a witness or under investigation for the same offence. (See Notes for Guidance in Codes of Practice in particular 1C and 1D and the section below regarding looked after children).

Where the welfare of the children/young people is of concern, then a representative of the YOS or local authority should normally attend the police station. Factors to be considered include; age of the child/young person, charge, length of detention, and information from police regarding the child/young person’s physical and emotional state.

1. If anyone in detention appears to be under the age of 17 they should be treated as a juvenile in the absence of clear evidence that they are older.

2. In this code, 'the appropriate adult' means: in the case of a juvenile:
   - his parent or guardian (or, if he is in care, the care authority or voluntary organisation);
   - a social worker. or
   - failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the police.

3. The parent or guardian of a juvenile should be the appropriate adult unless he/she is suspected of involvement in the offence, is the victim, is a witness, is involved in the investigation or has received admissions. In such circumstances it will be desirable for the appropriate adult to be some other person. If the parent of a juvenile is estranged from the juvenile, he/she should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to his/her presence.

4. If a juvenile in care admits an offence to a social worker, another social worker should be the appropriate adult in the interest of fairness.

5. A solicitor or lay visitor who is present at the station in a professional capacity may not act as the appropriate adult.

6. If the juvenile is in the care of the local authority or voluntary organisation but is living with his/her parents or other adults responsible for his/her welfare, then although there is no legal obligation on the police to inform them, they should normally be contacted. Even when a juvenile is in care and not living with his/her parents: consideration should be given to informing them as well.

References: PACE s57. Code C, Section 1.3. Children and Young Persons Act 1933 Section 31

Based upon the information from the custody officer you may be in a position to agree to provision of an appropriate adult. In this case establish whether a solicitor has been called. If a solicitor has been called you should note their arrival time. If a solicitor has not been called you should request that one is called. (In the unlikely event that the officer refuses, you should agree that the issue will be considered on attendance by the
appropriate adult at the police station). You should agree the time of arrival of the appropriate adult.

In other circumstances you may wish to gain further information about the child/young person or their parents or carers or take other action. This can include the following situations:

- the child is described as in care or looked after, and you wish to clarify their legal status, or discuss the matter with their social worker;
- the child is resident in another area and you want to discuss the case with that area's YOS or social services;
- you agree with the custody officer to contact or visit the parent(s); or simply,
- you want further information about the child/young person.

You should advise the custody officer of the actions you will be undertaking and agree a time when you will get back to them. (This should normally be within 30 minutes and should not be longer than 1 hour).

If the Hartlepool YOS are unable to provide an appropriate adult, then consideration should be given to the feasibility of a member of staff from a neighbouring YOS attending.

1.8 Record Check
Before attending the police station, (or as part of seeking further information), check YOS or social services records to see what is known regarding the young person.

In particular you should ascertain the young person's status including:

- any court orders (civil or criminal)
- any bail conditions
• whether they are a looked after child
• if they are on the child protection register; or
• the nature of any convictions, in particular violent or sexual offences.

If the record checks reveal that the young person is a ‘looked after child, where practicable, discussion should take place with the social worker from the relevant local authority.

Where the young person is accommodated, (including remands to accommodation), unless the local authority has parental responsibility, i.e. the child/young person is subject to a Care Order, efforts should still be made to contact the person with parental responsibility and reach agreement with them as to who will act as the appropriate adult.

If your record checks reveal any concern regarding a young person’s likelihood to self-harm or any specific medical needs these should be immediately brought to the attention of the custody officer.

Following any further investigations you will need to reach a view as to whether the YOS needs to provide an appropriate adult. The Crime and Disorder Act require Youth Offending Teams to provide appropriate adults, however the primary responsibility still lies with the child’s parents.

If there is more than one person able to act as the appropriate adult, decide who is the most appropriate person. Significant factors include:

- knowledge of/relationship with young person
- training and knowledge of the role of appropriate adult
- gender
- race and ethnicity

Before attending a police station, you should ensure that you have all relevant documentation.

**Note:** In relation to certain searches an appropriate adult of the same gender is required to be present. Further information is contained in the Legal Section below and in the Codes of Practice, Code C, Annex A.

1.9 **At the Police Station – Actions of Appropriate Adult**

1. Complete the PACE Log Monitoring Form (AAF1) and keep notes of other significant events.

2. Check your notes for guidance and if necessary take them with you for reference.

3. Introduce yourself to the custody officer and explain the reason for your attendance.

4. Ask to see the Custody Record for the young person(s) for whom you are attending, relevant information includes:
   - how long the child/young person has been detained;
   - meals, drinks and sleep (depending on the length of detention);
   - has a solicitor been requested or arrived, and;
   - whether any medical treatment been requested or given.
5. Ensure that the child/young person is read his/her rights and given a copy of them (in an appropriate language) in your presence.

6. Speak to the Police Officer conducting the case to establish the process, and if known, the likely outcome. Also establish:
   - Approximate length of the interview
   - Any other matters that the police wish to interview the Young Person about
   - On current information, is the Young Person likely to be charged, bailed, held for court
   - Is there an acceptable address for release

7. See the child/young person in private before any interview starts. You should:
   - explain your role; which is: to provide advice, but not legal advice, to observe that the interview is conducted fairly & facilitate communication.
   - explain that you cannot discuss the offence(s);
   - ensure the child/young person has been informed (and understands) the grounds for detention before any interview takes place;
   - give consideration to the well being of the young person including their physical condition, any special needs or disabilities;
   - discuss legal representation;
   - ensure that the young person understands their rights;
   - consider whether an interpreter is required;
   - assess whether in your view the child/young person is fit to be interviewed.

If a child/young person has not requested, or has refused legal representation, you should give serious consideration to obtaining legal representation for them. (Even where the child/young person is refusing legal representation you can exercise this right on their behalf, irrespective of their wishes). It is only in exceptional circumstance that legal representation should not be sought.

You should decide whether you think the young person is fit to be interviewed. If you believe the young person is unfit for interview for any reason you should draw this to the attention of the custody sergeant and ask for the interview to be delayed. (You may be concerned for example by the young person's lack of sleep, lack of food, possible intoxication or medical condition).

If you have any concerns regarding a young person’s physical or mental health you should ask that medical advice be sought.

Note: The Codes of Practice (3.12) note that the custody officer should advise the suspect that the appropriate adult is there to assist and advise, and that he can consult privately with the appropriate adult at any time. Do consider your own safety in this regard.

Do not allow yourself to be locked in a cell with a child/young person.

Note: An appropriate adult is not a privileged person. A solicitor, for example, has professional privilege; discussion between the solicitor and her/his client is confidential. The solicitor cannot be asked to testify against her/his client. If you receive or hear
admission or other potentially incriminating statements it is possible that you could be asked to make statements.

Note: Outside of the formal police interview you should not discuss the alleged offence with the young person nor should you be present when the solicitor interviews the young person.
Appropriate Adult

1.10 Interviews
One of the main reasons for detaining a person at a police station is to ask them questions. You are there to ensure that the interview is conducted fairly and to facilitate communication between the police and the child/young person, (even when there is a solicitor present). Ensure that at commencement of interview the child/young person is cautioned. (This is usually automatic) in the following terms.

“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.”

You should ensure that the child understands the caution. If there is any doubt you should ask the solicitor to explain the caution to the child.

Your main role is to ensure that in any interview the person detained understands the questions which are being asked and that the police do not ask questions in a way which is confusing, repetitive or oppressive.

Almost all interviews are audio tape recorded, but more and more interviews are video recorded. At the end of interview the master tape should be sealed. The police officer, child/young person and the appropriate adult should sign the label. (Code E deals with the formalities of tape recording interviews). Ensure that the child/young person is given a notice explaining the status of the tape recording and arrangements for access to it.

Exceptionally, if the interview is not tape-recorded you will be asked to sign each page of the interview notes. You are asked to sign them as an accurate record of the interview. You may refuse to sign them (but should only do so if they are inaccurate). You should also take notes of the interview if it is not being tape-recorded.
You must remain alert as to the impact on the young person of being interviewed. The Appropriate Adult may intervene, stop or request time out, if they feel conditions outlined in the code of practice are being breached. For example, if the Young Person is:

- Unduly pressurised and confused, i.e. by repeat or oppressive questioning
- Does not appear to understand the questions
- Becomes distressed
- Is uncertain whether to admit the offence
- Is asked questions about offences not previously mentioned or unrelated to the charge.

If you are concerned about the treatment the child/young person is receiving you must say so clearly.

If you are of the opinion that abuse or oppression is being used during the interview you must make representation to the officers conducting the interview. You should also inform the custody officer and review officer.

**Note:** The interview should be brought to an end when the investigating officer “believes that a prosecution should be brought against him and that there is sufficient evidence for it to succeed”. CoP (11.4)

However it should be noted that because of the possible unreliability of statements or admissions by juvenile officers should seek “corroboration of any facts admitted wherever possible.” CoP Guidance 11B.

### 1.11 Charges
As the appropriate adult, you should be present when the child/young person is charged.

**Note:** Whilst the role of appropriate adult ends at point of charge, the duties and responsibilities of the YOS and the local authority do not necessarily end at this point. Further guidance regarding the further role of YOS and the local authority is contained in Section 2 Detained Children & Young people.

Complete the PACE notification letter (AAL1), either give this personally to the parent/carer or post it to them immediately on return to the office. Do not give the letter to the young person, they could conceal it from the parent(s)/carer.

### 1.12 Other Police Procedures
In addition to the responsibilities outlined above. There are a range of other procedures that the police may wish to carry out that require an appropriate adult to be present, when a child or young person:

- is strip searched;
- is required to submit to an intimate search;
- has their photograph & fingerprints taken;
- takes part in any identification procedure;
- when a police reprimand or final warning is given; or
- has their home searched.
In certain circumstances some of these procedures require appropriate consent. Where consent is required it is usually required from the parent or guardian, from the child or young person, or in some circumstances from both. (Where the child or young person is subject to care order consent may be given by a representative of social services). An appropriate adult, where they are not the parent or guardian, cannot consent to these procedures.

In the case of a child under 14 years, appropriate consent must be given by parent or guardian (or care authority). The child's consent is not required. In the case of a young person aged 14 years or more, the consent of the parent or guardian is required as well as the young person.

Consent must be in writing.

Where the local authority have a Care Order, (subject to local policy), these consents may be given by a social worker.

For an accommodated child the consent must be that of the parent or guardian.

Note: The Codes of Practice do not recognise the distinction between an accommodated child and a child who is on a care order. The Codes of Practice seems to allow a social worker acting as an appropriate adult to consent in the case of an accommodated child, however this appears to contradict both the Police and Criminal Evidence Act and the Children Act.

Outlined below is further information relating to these procedures and the requirements in relation to appropriate adults.

1.12.1 Searches
A police constable may search someone who has been arrested at a place other than a police station. If the constable has reasonable grounds for believing that the arrested person may present a danger to himself or others, or to search for anything that might be used to escape from custody, or to search for evidence relating to an offence. The search may take place at point of arrest or on arrival at a police station.

A constable may seize and retain anything found on such a search but clothes and personal effects may only be seized in the above circumstances. The presence of the appropriate adult is not required.

Power to search

A person may be searched if Custody Officer
- considers it necessary under Section 54(1), and
- to the extent considered necessary for that purpose

There is a continuing power for all the time a person is in police custody/detention

All searches must be conducted by a constable of the same sex as the person searched
1.12.2 **Strip Search**

A strip search involves removal of more than outer clothing.

Strip searches
- should not be carried out as a matter of routine.
- may only be carried out by an officer of the same gender.
- do not require appropriate consent.

**Except in an emergency, the appropriate adult must be present unless the juvenile states** that s/he does not want that person present and the appropriate adult agrees. A record should be made of this decision and **signed by the appropriate adult**.

**Strip Search**

A search involving the removal of more than outer clothing

may take place ONLY if Custody Officer considers it would be necessary to

remove an article which the detained person would not be allowed to keep and that it might be concealed

at least two persons should be present

no person of opposite sex to be present (except Doctor, Nurse, or appropriate adult), or

anyone whose presence is unnecessary

1.12.3 **Intimate Body Search**

The search must be carried out by a suitably qualified person unless a superintendent considers that this is not practicable in which case it must be an officer of the same gender. A superintendent can authorise such a search.
Intimate body searches may only take place in the presence of an appropriate adult, unless the juvenile states that s/he wishes the appropriate adult to leave and the appropriate adult agrees with this request. A record should be made of this decision and signed by the appropriate adult. The appropriate adult must be of the same gender unless the child/young person specifically asks for a particular adult of the opposite gender who is readily available.

**Intimate Searches**

- **An intimate search**
  - requires the authority of a Superintendent or above
  - consists of a physical examination of any person's body orifices other than the mouth

- **The authorising Officer must have**
  - reasonable grounds for believing that the person may have concealed
  - ANYTHING he/she could use to cause physical injury to him/herself or others whilst in police detention or custody of a court, OR
  - Class A drug possessed with appropriate criminal intent before arrest - this is a drug offence search
  - that it can only be found by an intimate search

- **Authority may be given**
  - orally - to be confirmed in writing as soon as practicable, or in writing - on the custody record

- **If search authorised the person must be told**
  - before search - the reasons why an intimate search is considered necessary
  - a Registered medical practitioner or registered nurse (if NOT a drug offence search and a Superintendent considers it is not practicable to use a registered medical practitioner or registered nurse - a constable of the same sex may carry out the search - the reason for this must be recorded)

- **May only be carried out by**
  - No person of opposite sex (except a doctor/nurse), or anyone whose presence is unnecessary may be present

- **The search must take place at**
  - police station, hospital, surgery of a registered medical practitioner, or other place used for medical purposes (intimate search for Class A drug cannot be carried out at a police station)
  - parts of body searched
  - persons making the search
  - persons present at search
  - reasons for the search
  - result of the search
  - if the search is carried out by a police officer, reason why impracticable for registered medical practitioner/nurse to conduct
  - on custody record as soon as practicable after search

- **Must record**
  - anything which the custody officer may use
  - has reasonable grounds to believe
  - to cause physical injury, or to damage property, or to interfere with evidence, or to assist escape
  - may be evidence relating to an offence
  - Reason for seizure must be given unless the person is violent, likely to become violent or incapable of understanding

- **May seize and retain**
  - has reasonable grounds to believe
  - may be evidence relating to an offence
  - Reason for seizure must be given unless the person is violent, likely to become violent or incapable of understanding

**Appropriate Adult**
1.12.4 **Photographs.**
Appropriate consent is required, in certain circumstances, for the taking of photographs. Written consent must be obtained in the presence of the Appropriate Adult, who should also remain with the Young Person while being photographed. It is normal Police practice to take the fingerprints and a photograph of everyone charged, cautioned or reported for a recordable offence, in accordance with the PACE and the Codes of Practice. See flow chart below.
1.12.5 **Fingerprints**

Before charge, fingerprints may be taken either with appropriate consent or following: authorisation by a superintendent. After charge fingerprints may be taken without appropriate consent, where the juvenile has been charged with, or reported for, a recordable offence (i.e. on national police records), and fingerprints have not been taken in the course of the investigation. Reasonable force may be used to obtain fingerprints without her/his consent. It is normal Police practice to take the fingerprints and a photograph of everyone charged, cautioned or reported for a recordable offence, in accordance with the PACE and the Codes of Practice.

The appropriate adult must remain with the juvenile during fingerprinting.

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**Fingerprints**

Where a person is in a police station his/her fingerprints can be taken

If he/she gives written consent in writing and he/she is informed of the reason for taking the prints

Without consent (using force if necessary) if

a Superintendent with reasonable grounds who feels that the prints will tend to confirm or disprove involvement, authorises it

charged with or informed of prosecution for, a recordable offence and prints had not yet been taken during the investigation

If the person is not cautioned, not prosecuted or prosecuted and cleared

the prints and all copies of them must be destroyed as soon as practicable

the person has the right to witness the destruction if they apply within five days of being cleared or informed they may not be prosecuted

In either case the person must be informed of the reason before they are taken and that they will be destroyed as soon as practicable if they are no longer required

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*Appropriate Adult*
1.12.6 **Intimate Samples**

Blood, semen, tissue, fluid, dental impression, urine, pubic hair or any swab taken from a body orifice (other than from the mouth). Requires approval of a Superintendent and appropriate consent.

An appropriate adult of the same gender may be present unless the juvenile objects.

**Intimate samples**

- If an officer of the rank of Superintendent or above has reasonable grounds to believe that such an impression or sample will tend to confirm or disprove the suspect's involvement in a recordable offence and gives authorisation for a sample to be taken; and
  - with the suspect's written consent

- If the person is in police detention and not legally represented, he or she must be reminded of the entitlement to free legal advice and the reminder must be noted in the custody record

- Before a person is asked to provide an intimate sample he or she must be warned that refusal without good cause may harm his or her case if it comes to trial

- Two or more non-intimate samples have been taken from him or her in the course of an investigation and the samples have proved unsuitable or insufficient for a particular form of analysis, an intimate sample may be taken if a Superintendent or above authorises it to be taken, and the person concerned gives written consent

- If the person attends a police station voluntarily, the officer shall explain the entitlement to free legal advice as provided for in accordance with the Codes of Practice.
1.12.7 **Non Intimate Samples**
Non pubic hair, nail scrapings, saliva, footprint impressions, mouth swab, impressions taken from the body other than the hand. Non-intimate samples may be taken without consent on the written authority of a Superintendent. The grounds must be explained to the juvenile and appropriate adult and entered in the custody record. If clothing needs to be removed to obtain samples only those required to take the sample should be present.

An appropriate adult of the same gender may be present unless the juvenile objects.
1.12.8 Identification Procedures

There are a range of ways that the police can use in the identification of suspects by witnesses. These are:

- identification parade;
- group identification;
- video identification; or,
- confrontation.

In such cases, the Appropriate Adult cannot give consent to any identification procedures, as consent is required from parents/carer who should also give consent for those under 14 years or age. For those aged 14 years+, then they can give their own consent, but to be valid, this must be witnessed by the Appropriate Adult.

With the exception of video identification, (where the suspect is not present), where a child or young person is the suspect an appropriate adult must be present.

1.12.9 Reprimands and Final Warnings

For offenders under the age of 18, a first offence may result in a reprimand, warning or a prosecution. A first offence will often warrant a reprimand, however a warning rather than a reprimand will be given where the first offence is considered too serious to justify a reprimand. If the offence is viewed to be of a more serious nature it may result in prosecution.

Following a reprimand a subsequent offence may only be dealt with by a warning or charge. Any further offence normally leading to a prosecution, however, a second warning may be administered, where the offence is not serious and more than two years have passed since the first warning was given. No one may receive more than two warnings.

Before a reprimand or warning may be administered there must be sufficient evidence of the offence to provide a realistic prospect of a conviction and an admission of guilt by the child or young person.

There is no requirement that either the child or young person or his/her parent or guardian consents to the administering of the reprimand or warning. If the offender is under the age of 17, it must be administered in the presence of an appropriate adult.

The statutory requirement is for an appropriate adult to be present when a reprimand or final warning is issued to a child or young person under 17. However National Standards state that where the offender is aged 16 or under they must be administered in the presence of the parent or primary carer.

The Criminal Justice and Court Services Act 2000 removed the requirement that a reprimand or warning must be administered at a police station and enabled the Home Secretary to prescribe the places where reprimands and warnings are given. The CJCSA 2000 also gave the police the power to bail pending delivery of a reprimand or warning. (These measure are intended to allow the giving of reprimands or warnings at places such as the YOS office following an assessment or after a restorative conference).
Whenever the appropriate adult is present during any of the above procedures, this must be noted on the PACE Log Form.

The police will record the reprimand or warning. It may be cited in subsequent criminal proceedings.

When a child or young person is given a warning s/he shall be referred to a youth offending team as soon as practicable. The youth offending team must carry out an assessment of the offender and unless it is inappropriate, arrange for the young offender to participate in a rehabilitation programme.

If a person is convicted of an offence within two years of receiving a warning, the sentencing court may not make a conditional discharge, unless it is of the opinion that there are exceptional circumstances that justify it.

In deciding whether to reprimand, finally warn or charge police will need to give consideration to the seriousness of the offence. The Association of Chief Police Officers has given guidance on dealing with young offenders: ACPO Youth Offender Case Disposal Gravity Factor System.

Certain offences and incidents will fall under the Policy and Guidance on Reviewing Serious Incidents issued by the Youth Justice Board. These are:

- death or attempted suicide
- involvement in a deliberate activity that results in major injury to the young person or others
- murder
- attempted murder
- serious sexual assault
- serious physical assault

If any of the above applies you must immediately inform the YOS Manager and hand over the young person’s file.

1.12.10 Home Searches.

The police have the right under certain circumstances to search the Young Persons home or place of last residence, to look for evidence. If the police ask the Young Person to accompany them when they carry out the search, then an Appropriate Adult should be present and remain with the Young Person. The police will provide transport to and from the premises.

1.13 Mandatory Drug Testing (MDT)

NOTE: THIS TESTING IS CURRENTLY (1.07.2006) ONLY APPLICABLE TO THOSE YOUNG PEOPLE ARRESTED IN MIDDLESBROUGH POLICE DISTRICT.

Young People between 14 and 17 years will be made subject of MDT following arrest for a specified offence e.g. robbery, burglary, theft etc. The purpose of the testing is to:

- Identify at an early stage young people who may go on to develop a problem with drugs and
- Divert them away from crime and drugs.
MDT will be carried out through the Criminal Justice Interventions Programme to identify individuals who misuse specified Class A drugs, heroin, and/or cocaine/crack.

Those young people who test positive or admit drug use should be encouraged to address their drug misuse by receiving appropriate holistic support and to engage with the Youth Support Workers (Arrest Referral Scheme) who will be able to assess what further interventions may be necessary.

1.13.1 **Actions associated with MDT**

Prior to attendance at the Police Station ensure whether or not the young person has been previously mandatory drug tested and whether the young person is or has been previously engaged in treatment. This is important if the police are intending to use previous positive test results to deny bail.

In addition check whether there is current Social Services involvement. If the young person is in care make enquiries with the local authority as to whether they or you are the most appropriate person to attend. If it is you, ensure you are aware of the local authority’s views with regard to corporate parenting in relation to MDT.

MDT applies to all young people arrested in Middlesbrough. If a young person is not resident in Middlesbrough Borough inform their local Youth Offending Service that you are attending as an appropriate adult and that the young person is subject to MDT.

In circumstances where a young person is declining legal representation arrange to attend and see the young person in private to appraise their reasons for declining.

As an appropriate adult you have the power to overrule a young person’s decision regarding legal representation at any point in the proceedings. This becomes more crucial at the point of MDT if the young person is refusing to take the test.

Your key role is to explain the testing process and the reason why the test is required and to witness and sign to indicate the young person has agreed or declined to take the test. You are signing as witness to the proceedings and not as consent for the test to take place. The police will normally require a sample where the young person is arrested for a ‘trigger offence’ but at the Inspector’s discretion they may require a test for any offence where they believe that Class A drugs have played a part.

Do not advise a young person to decline a MDT. In such circumstances ensure the young person is legally represented. If the solicitor fails to attend within 6 hours you may make representation to the Custody Sergeant in exceptional circumstances.

MDT only follows after Reprimand, warning, bail or charge and there exists a 6-hour period to ensure proper representation.

A positive test result cannot be used to influence the current decision on police bail nor may it be used as evidence. The result may only be used to help the Courts in determining bail or sentencing or influence police bail if the young person is subsequently arrested again.
Failure to provide a suitable sample without ‘reasonable cause’ is a strict liability offence, which upon conviction attracts a fine or community sentence. This charge will stand even if the young person is subsequently found not guilty for the original offence.

The police will retain MDT samples even if the young person is found not guilty and will only destroy them if the original arrest is deemed to be unlawful.

1.13.2 **Further Information on MDT**

The police will normally notify parents of any positive results. In circumstances where they choose not to do so the police should deal with this via existing Child Protection procedures to avoid difficulties for PSR authors when presenting reports to the Court.

The police will automatically inform South Tees YOS Drug Misuse Worker of those tested and the results and of any young people where a decision is made not inform their parents. This information will be passed to the relevant Case Manager/Report Author. This information will also be immediately available to the YOS Court Team office.

If the MDT test is positive and the Youth Support Workers (Arrest Referral Scheme) are not present you should ask the young person if they would like to speak with them. If the Youth Support Worker is not immediately available ask if they would like you to make a referral to Make A Change (MAC), young people’s drug team on their behalf. (YOS referral procedures apply.)

PSR authors should liaise with the Youth Support Worker to ascertain whether the young person has actively engaged in treatment and given their consent for this information to be used positively by the Courts when sentencing. If the young person is an existing client of the YOS this information should also be available through the Drug Misuse Worker.

1.14 **National Standards**

National standards are set by the Home Secretary on advice from the Youth Justice Board. They are the required standards of practice which practitioners who provide youth justice services are expected to achieve. **National Standard 2 – Remand Management** covers the responsibilities of Youth Offending Services in relation to the provision of Appropriate Adult Services.

Briefly these are:

- The YOS must provide an appropriate adult service to police stations in their area.
- YOS staff or accredited volunteers may provide appropriate Adult Services.
- The YOS must produce written information for the parents/carers of Young People arrested.
- The YOS must ensure adherence to the Police & Criminal Evidence Act (PACE) 1984 & the Codes of Practice made therunder.
- Records must be kept of the reasons why parents/carers did not attend police stations.
• Arrangements should be in place to support parents/carers allowing them to attend police stations.

• When a young person has been charged the YOS must inform parents/carers, not present during the interview of the young person, the outcome (in writing) within 1 day.

• Appropriate Adults cannot act for parents/carers during the administering of a Reprimand or Final Warning unless there are exceptional circumstances and the agreement of the YOS Manager is sought.

For more detailed information refer to National Standards for Youth Justice Services 2004 copies of which are readily available.
2. **Detention and subsequent procedures**

This section outlines the role staff from the Youth Offending Team when children who have been detained by the police are:

- released
- bailed (with or without conditions)
- detained following charge
- transferred to local authority accommodation

and covers the responses and actions of the Youth Offending Service in relation to the Police and Criminal Evidence Act 1984, the Codes of Practice, the Children Act 1989, and related legislation and guidance.

It includes situations in which a member of the YOS acts as the responsible adult and also where another person acts as the responsible adult and police request the accommodation of a detained child/young person.

This procedure applies to all staff, volunteers, and foster carers from the Youth Offending Service attending police stations in relation to children and young people and applies to situations where:

- a representative of the department has acted as an appropriate adult,
- to children/young people where a parent (or other adult) has acted and either the parent/carer is refusing to take responsibility for the child/young person or the police are seeking to detain the child.

The Children Act 1989 places a specific duty on the local authority to provide accommodation for children and young people (aged 10 to 17) whom the police detain and seek to transfer to accommodation.

Where police are seeking to release a detained child, the responsibilities of the Youth Offending Service and the police are not specifically legally defined.

Taking responsibility for the child/young person as the responsible adult is not automatically part of the appropriate adult role, and there are no direct statutory responsibilities on the YOS or the local authority, although a representative of the YOS will usually assume this role. (The child may be considered a child “in need” under S17 of the Children Act 1989). If the child/young person is in the care of the authority or accommodated then Health & Social care will always take responsibility for the child/young person.

There are no direct statutory responsibilities on the police to return a detained child or young person whom they intend to release to their parents or carers.

2.1 **Policy**

The YOS will seek to ensure that detained children/young people are moved as quickly as possible to local authority accommodation.

Social services will maintain a range of appropriate provision for detained children/young people.
2.2 Responsibilities
Key responsibilities include:

- promoting the emotional and physical well being of young people
- advising detained children/young people
- assisting communication between a child/young person and the police
- ensuring that appropriate arrangements are made for children/young people who are released or bailed
- ensuring that appropriate arrangements are made for children/young people who are transferred to local authority accommodation
- being alert to any wider needs of the child/young person including any child protection issues

2.3 Key Tasks

- consider relevant and available information prior to attending police station
- ensuring that parents are aware of what is happening to a child
- ensuring that parents are consulted about any decisions made by the Youth Offending Service
- you must advise the custody officer of any known risk of self harm
- arranging the transportation of children/young people detained and transferred to local authority accommodation
- referring any child or young person who may be in need to health and social care.

2.4 Release or Continued Detention

When a child or young person has been detained, dependent upon whether or not the young person is charged, the custody officer has a range of options available. If the young person has been charged the custody officer will have to consider whether to release on bail - with or without conditions, or detain the child/young person.

The custody officer will make this decision, usually following representations from the arresting officer and the young persons legal representative.

If the police are unable to find an adult prepared to take responsibility for a child whom they intend to release, the police can either detain the child, ‘in his own interest’, (in which case the police should request that social services detain the child); or the police could take the child into Police Protection and request the child is accommodated. The practical effect of this is that in most circumstances a representative of the Youth Offending Service will assume the role of the responsible adult.

In the case of young people accommodated by the authority, or for whom the local authority has parental responsibility and for those on supervision orders the police should inform social services or the YOS of their detention.

As an Appropriate Adult you should

- seek to ensure that the young person is legally represented
- give information in order to assist in the decision regarding detention and bail

It may be that the YOS is in possession of information, which is relevant to the decision regarding bail, and this should be given. For example it may be possible to establish or
confirm the accuracy of the name or address of the child/young person or to give knowledge relating to previous conduct on bail.

You should not:

- negotiate conditions with regard to bail
- enter into any form of recognisance

A recognizance is entered into by an adult and is an agreement to pay a cash sum in an amount the custody officer considers will secure the young person's attendance at the hearing of the charge. No money is exchanged. It is in effect a promise to pay the agreed amount if the young person fails to attend as agreed.

2.5 The Responsible Adult

When a child or young person is in police detention the police are required to inform a person responsible for his/her welfare of the detention. In addition to the parent/guardian this may be any other person who has for the time being assumed responsibility for his/her welfare.

If the police request you to take responsibility for a child/young person they are intending to release with or without bail. There are no direct statutory responsibilities on the responsible adult or the YOS, but when acting in this capacity;

- try to contact the parents/carer
- assess whether they are able and willing to receive the child/young person
- see if the parents are able to arrange transport

If the parents are unable to transport them home make appropriate arrangements.

If the child or young person is looked after or on a care order or emergency protection order you should confer with social services regarding the return to their placement.

Wherever possible and practicable (whatever the transport arrangements), the child or young person should be returned to their parent or guardian or other responsible adult.

You must remain alert to any welfare needs the young person may have, including any child protection concerns.

Where the police are seeking to transfer a young person to local authority accommodation during office hours, contact should be made with a social services resource team manager. Out of office hours contact should be made with EDT.

2.6 Detention

The custody officer may decide to refuse bail and detain the child/young person. You should find out which of the grounds under S 38 (1) of PACE that the custody officer is applying. (see flow chart circumstances where bail may be refused at 2.6.2).

In each case these grounds should be reasonable i.e. there must be justification for the grounds that are relevant. If there are doubts in relation to those reasons then further clarification should be sought, preferably through the young persons legal representative.
If the custody officer decides to detain a child or young person arrangements will need to be made to transfer the child/young person to local authority accommodation. (In relation to 12 - 16 year olds the police can require that the accommodation is secure accommodation in order to protect the public from “serious harm”).

**Circumstances where bail cannot be granted**  
**Criminal Justice and Public Order Act 1994 (s25)**

Bail cannot be granted either by a Court or by a Custody Officer where a person has been charged with and offence of

- murder
- attempted murder
- manslaughter
- rape or attempted rape

and the person has been previously convicted by or before a court in any part of the United Kingdom of an offence of

- murder
- attempted murder
- manslaughter or culpable homicide (in Scotland)
- rape or attempted rape

is applicable in the case of manslaughter or culpable homicide only if the person was sentenced to imprisonment or, in the case of a child or young person, to long term detention under a relevant enactment.
2.6.1 Bail – before charge
Section 37 of the Police and Criminal Evidence Act 1984 requires the custody officer to determine whether there is sufficient evidence to charge. If there is sufficient evidence, the juvenile may either be charged, or released without charge, on bail or without bail, pending a decision regarding prosecution.

If there is insufficient evidence and no more evidence can be collected immediately the custody sergeant must either release the suspect without requiring them to return or release the suspect on bail, pending further enquiries, subject to a duty to surrender to the police station at an appointed time. The police can arrest, without warrant, anyone who has failed to return to the police station having been granted bail.

(The custody officer has no power to impose bail conditions prior to charge, although they can require sureties or securities in order to prevent the person from failing to surrender, committing an offence, interfering with witnesses or otherwise obstructing the course of justice).

The CJCSA 2000 also gave the police the power to bail pending delivery of a reprimand or warning. (These measure are intended to allow the giving of reprimands or warnings at places such as YOT office following an assessment or after a restorative conference).

Note: Where there is a warrant not backed for bail there are no powers to transport to local authority accommodation and the defendant will remain in police custody.

2.6.2 Bail - after Charge
Section s38(1) of the Police and Criminal Evidence Act 1984 requires that arrested juveniles charged with an offence are released from police detention either on bail or without bail unless:

1. his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting that a supplied name or address is correct;

2. the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer bail;

3. in the case of an imprisonable offence that the custody officer has reasonable grounds for believing that the detention of the person is necessary to prevent them committing an offence;

4. in the case of an offence that is not imprisonable that the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection to prevent him causing physical injury to any other person or from causing loss of or damage to property;

5. the custody officer has reasonable grounds for believing that detention is necessary to prevent the person from interfering with the administration of justice or with the investigation of offences or of a particular offence;

6. the custody officer has reasonable grounds for believing that detention is necessary for the persons own protection.
If the person arrested is a juvenile, the custody officer has reasonable grounds for believing that he ought to be detained in his own interest.

**Circumstances where bail may be refused**

Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the Custody Officer shall order his/her release from police detention, either on bail or without bail, unless

Section 25 Criminal Justice Act 1994 applies

- believing that the detention of the person arrested is necessary for the purposes of preventing the accused from failing to surrender, offending while on bail, interfering with witnesses or otherwise obstructing the course of justice.

- believing that the detention of the person is necessary to prevent him/her from committing an offence (only if the case of a person arrested for an imprisonable offence)

- believing that the detention of the person is necessary to prevent him/her from causing physical injury to any other person or causing loss of or damage to property (only in the case of a person arrested for an offence which is not imprisonable)

- believing that the detention of the person arrested will fail to appear in Court to answer bail

- believing that they ought to be detained for his/her own interest (in the case of an arrested juvenile only)

- doubting whether a name or address furnished by the person is correct or that the person's name or address cannot be ascertained

**2.6.3 Conditional Bail**

Section 27 of the Criminal Justice and Public Order Act 1994 gives the custody officer power to impose conditional bail, if the custody officer is satisfied that conditions are necessary for the purposes of preventing the accused from, failing to surrender, offending while on bail, interfering with witnesses or otherwise obstructing the course of
justice. The custody officer can impose the same conditions as a court excepting a condition of residence in a probation hostel.

### 2.6.4 Continuing Detention

Where a custody officer is of the opinion that the juvenile should not be released on conditional or unconditional bail the juvenile may be kept in detention. The officer should request transfer to local authority accommodation. Those aged under 12 should always be transferred to local authority accommodation. For those aged 12 and under 17 the
Juvenile should be transferred to local authority accommodation unless this is impracticable or secure accommodation is unavailable.

**Detention after charge - juvenile**

- **Juvenile (under 17)**
  - Where decision made to detain
    - under 12 years
      - unless impractical to do so eg. Local authority has a temporary shortage of staff or accommodation
    - 12 years and over
      - may be detained in police accommodation
        - if no secure local authority accommodation is available and keeping him/her in other local authority accommodation would not be adequate too protect the public from serious harm from him/her PACE s38(6), OR

Where the juvenile is not transferred to local authority accommodation the custody officer must certify why the transfer was impracticable, or that there was no available secure accommodation, and keeping the defendant in other accommodation would not be sufficient to protect the public from serious harm. The certificate should be produced at the first court hearing.

Where a juvenile is moved to local authority accommodation, it is lawful for any person acting on behalf of the authority to detain him.
In 1992 the Home Office issued Circular No 78/1992, the Circular gives guidance on the interpretation of S38(6). (Note: the Criminal Justice and Public Order Act 1994 lowered the age at which a custody officer could require secure accommodation in order to protect the public from serious harm from age 15 to 12, the circular has not been updated). With regard to the two exceptions to the requirement to transfer a juvenile to accommodation the following guidance is given:

2.6.5 Impracticability of transfer to local authority accommodation
The circumstances which make a transfer impracticable are when it is physically impossible e.g. extremes of weather and inability to contact the local authority.

The type of accommodation in which the local authority proposes to place the juvenile is not a factor that affects impracticability; the unavailability of secure accommodation does not make the transfer impracticable.

2.6.6 12 to 16 year olds - additional exceptions
The police are allowed to hold a 12 to 16 year old in police detention where the custody officer certifies that no local authority secure accommodation is available, and that holding the juvenile in other local authority accommodation would be inadequate to protect the public from serious harm from him. Serious harm, in relation to sexual or violent offences, meaning death or serious personal injury, whether physical or psychological.

The circular noted that serious harm is not defined in relation to other offences but suggests that the gravity of harm to which the public would need to be exposed for the test to be satisfied would be similar.

The circular noted that in dealing with 15 and 16 year olds, now 12 - 16 year olds, the objective is to ensure that the accommodation in which they are detained is the most suitable for them, having regard to the need to protect the public from serious harm. The Codes of Practice Code C, Notes for Guidance 16B state that except for the proviso where only secure accommodation would be adequate to protect the public from serious harm:

…neither a juvenile’s behaviour nor the nature of the offence with which he is charged provides grounds for the custody officer to decide that it is impracticable to seek to arrange for his transfer to the care of the local authority. Similarly, the lack of secure local authority accommodation shall not make it impracticable for the custody officer to transfer him. The availability of secure accommodation is only a factor in relation to a juvenile aged 12 or over when the local authority accommodation would not be adequate to protect the public from serious harm from the juvenile. The obligation to transfer a juvenile to local authority accommodation applies as much to a juvenile charged during the daytime as it does to a juvenile to be held overnight, …
2.7 Provision of Accommodation

The Children Act 1989 s21 requires local authorities to provide accommodation for persons transferred in pursuance of s38(6) PACE. (Note that there is no specific reference requiring the provision of secure accommodation).

Detained children who become accommodated for more than 24 hours become looked after children within the meaning of the Children Act 1989.

The Children Act introduced the concept of the looked after child. Detained children, and children remanded to accommodation for more than 24 hours become looked after children; they are not in care. The local authority does not acquire parental responsibility for looked after children; this remains with the parents (or others) who hold parental responsibility.

It is important to bear in mind when considering placement, that under S22 (4) of the Children Act 1989, where reasonably practical, the wishes and feelings of the child, those with parental responsibility and any other person whose wishes and feelings the authority considers to be relevant, should be sought.

Volume 1 of the Children Act Regulation and Guidance includes the following advice to local authorities regarding placement of detained juveniles:

In determining how such children are to be accommodated, the authority will need to have regard to the fact that the police custody officer has not ordered the juvenile’s release from police detention....

2.7.1 Accommodation – Role of YOS Worker

Key tasks:

- establish the grounds for detention
- assess the type of placement required
- where practicable consult with the young person and their parents/carers regarding placement
- arrange for transport for the child/young person
- accompany the young person to the placement
- apply the Looked After Children Procedures

2.7.2 Secure Accommodation

In the majority of cases of young people detained by the police the use of secure accommodation will not be a consideration. However in the case of 12 - 16 year olds the police can continue to detain if they believe that holding the child/young person in other local authority accommodation would be inadequate to protect the public from serious harm.

Where the police are seeking secure accommodation, immediate consultation must take place through line management. Placement in secure accommodation can only take place with the approval of an officer at assistant director level or above in the local authority.

Note: No child aged under 13 can be placed in secure accommodation without prior approval of the Secretary of State. In the first instance the Social Services Inspectorate
should be approached or out of hours through the Department of Health Emergency Service.

... Restricting the liberty of children is a serious step which must be taken only when there is no appropriate alternative. It must be a 'last resort' in the sense that all else must first have been comprehensively considered and rejected — never because no other placement was available at the relevant time, because of inadequacies of staffing, because the child is simply being a nuisance or runs away from his accommodation and is not likely to suffer significant harm in doing so, and never as a form of punishment.

... Steps should be taken to ensure that all decisions to seek placement for a child in secure accommodation are taken at a senior level in the authority. This should be not less than at Assistant Director level ...

Children Act Guidance and Regulation Volume 4.

The consultation process should include consideration of the following points:

1. Are the grounds for refusing police bail met.
2. Age. (The police can only require secure accommodation in relation to 12 to 16 year olds)
3. The nature of the alleged offence.
   - Is it a violent or sexual offence?
   - Were the public put at risk of serious harm?
   - If not a violent or sexual offence, were the public been put at risk of serious harm?
   - Is it likely to be repeated if the young person is detained in 'open' accommodation?

[Likelihood of causing injury to others will be indicated by the circumstances of the charge (which may include behaviour immediately preceding and following the allegation), and/or any threats or statements made by the child/young person during detention.]

4. What accommodation is the local authority able to offer; is this accommodation adequate to protect the public from serious harm.
5. Have all the accommodation options been explored, are there any other options that are adequate.

Following consultation, where it is considered appropriate, other options should be presented by the social worker and discussed with the custody officer.

For example a placement that is at a satisfactory distance from the alleged offence or victims or witnesses and provides a high level of supervision may be acceptable.

The decision to require secure accommodation resides entirely with the custody officer. The decision as to whether the young person fits the criteria for secure accommodation rests with the local authority.
Where the custody officer continues to require secure accommodation discussion should take place through line management as to whether:

- the criteria under the Children Act for placement in secure accommodation are met
- placement availability
- authority for funding

The legislation and guidance regarding the provision of secure accommodation to detained children is complex and arguably contradictory. Section 2.7.3 to 2.7.6 summarises the main provisions and considerations regarding secure accommodation as they relate to detained children.

The placement of children in secure accommodation is governed by s25 of the Children Act 1989 and the Secure Accommodation Regulations.

### 2.7.3 Placement of children in secure accommodation - General Criteria

The Children Act 1989 s25(1) provides:

A child who is being looked after by a local authority may not be placed, and, if placed, may not be kept in accommodation provided for the purpose of restricting liberty ("secure accommodation") unless it appears:

(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.

### 2.7.4 Modified Criteria for Detained and Remanded Children


6.- (1) Subject to regulation 5, section 25 of the Act shall have effect subject to the modification specified in paragraph (2) in relation to children who are being looked after by a local authority (c) and are of the following descriptions—

(a) children detained under s38(6) of the Police and Criminal Evidence Act 1984(d) (detained children), and

(b) children remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969 (c) (remand to local authority accommodation) **but only if**-

(i) the child is charged with or convicted of a violent or sexual offence or an offence punishable in the case of an adult with imprisonment for a term of 14 years or more; or

(ii) the child has a recent history of absconding while remanded to local authority accommodation, and is charged with or has been convicted of
an imprisonable offence alleged or found to have been committed while he was so remanded.

In such cases the criteria are modified to read as follows:

A child who is being looked after by a local authority may not be placed, and if placed, may not be kept, in accommodation provided for the purposes of restricting liberty ... unless it appears that any accommodation other than that provided for the purpose of restricting liberty is inappropriate because-

(a) the child is likely to abscond from such other accommodation, or
(b) the child is likely to injure himself or other people if he is kept in any such other accommodation.

In other words secure accommodation may be used for detained children if the child has been charged with a violent or sexual offence, or an offence that has a maximum penalty of 14 years or more, or the child has a history of absconding while remanded to accommodation and is charged or convicted of an imprisonable offence whilst remanded and it appears that other accommodation is inappropriate because the child is likely to abscond or the child is likely to injure himself or other people.

However; the Children Act s22 defines a 'looked after' child as a child accommodated by a local authority for a "continuous period of more than 24 hours". The Children Act Guidance from the Department of Health defines a 'looked after' child as "A child is 'looked after' by a local authority if he is in their care by reason of a court order or is being provided with accommodation for more than 24 hours..."

In many cases the definition is not significant. However, it may be highly significant where the local authority is considering placing a detained child in secure accommodation.

In relation to detained juveniles, it has been argued, that unless a young person was previously accommodated for a period of more than 24 hours, (for example, as an accommodated child or on a care order) that the local authority have no power to place in secure accommodation. Conversely it has been argued that s38(6B) of PACE Act 1984; it shall be lawful for any person acting on behalf of the authority to detain him, gives the authority to detain.

If the situation arises where consideration is being given to placing a child in secure accommodation, who is not in the Authorities Care or who has not been accommodated for more than 24 hours in the preceding 24 hours, legal guidance should be sought.

2.7.5 Children under 13

The Children (Secure Accommodation) Regulation 4 requires that no child aged under 13 shall be placed in secure accommodation without prior approval of the Secretary of State. The Children Act Guidance volume 4 advises that in the first instance the Social Services Inspectorate are approached.
2.7.6 **Maximum period in secure accommodation without court authority**

The Children (Secure Accommodation) Regulation 10 requires that the maximum period that a child can be kept in secure accommodation without the authority of a court is 72 hours.

2.8 **Transfer to Accommodation**

Whenever possible the child/young person should be immediately taken to the Youth Offending Team establishment or directly to the placement. The child/young person should not remain at a police station awaiting placement unless this is unavoidable.

The decision as to where a child/young person is transferred to accommodation is placed rests entirely with social services unless the child/young person is 12 - 16 and protection of the public from serious harm is an issue, in which case the police can require secure accommodation.

In deciding what is the most appropriate placement, the reasons the police are refusing bail should be given active consideration. Relevant factors are likely to include the proximity of the accommodation to the offence, to witnesses or victims, any previous record of the child/young person in responding to bail and any other relevant factors in the particular case.

Detained children who become accommodated for more than 24 hours become accommodated children within the meaning of the Children Act 1989. It is therefore important to bear in mind when considering placement that under s22 (4) of the children act where reasonably practical, the wishes and feelings of the child, those with parental responsibility and any other person whose wishes and feelings the authority considers to be relevant, should be sought regarding placement.

2.9 **Responsibility for detained and accommodated juveniles**

If the detained child or young person has been transferred to accommodation provided by the authority then it is the Youth Offending Services responsibility to ensure attendance at court.

(The local authority should provide appropriate advice and assistance to the child/young person who is detained. The child/young person should be afforded no lesser rights than they would be entitled to in custody, for example access to legal advice).

If a child/young person is to be moved to secure accommodation an appropriate method of transport must be agreed.

Under no circumstance will a child/young person be moved to local authority accommodation without being accompanied by a member of staff of the YOS or the local authority.

2.10 **Court**

When a child/young person has been detained in police custody the Court Officer must record the reasons given for detention in the police custody certificate.
2.11 Monitoring
The relevant Pace Log monitoring form (AAF1) should be completed by the YOS worker dealing with the child/young person and passed to the Youth Offending Service administration.

2.12 National Standards
National Standards in relation to detention state that Local authorities must monitor the extent to which children and young people are held in custody overnight. Where concerns are justified, they must be raised with the agency responsible under the provisions of PACE.

For more detailed information refer to National Standards for Youth Justice Services 2004 copies of which are readily available.