

Joint protocol  
for the safeguarding  
and transfer of children  
&  
young people  
from police custody to  
local authority  
accommodation & secure  
accommodation.

	Page
1. Back ground.	2
2. Purpose of the protocol.	2
3. Legal Frame work.	3
4. Procedures for seeking local Authority accommodation.	3
5. Arrangements for Transfer.	4
6. Escalation.	5
7. Monitoring and Review.	6
8. Authorisation.	7
9. Appendices.	8

# 1. Background.

It is well documented that children and young people who are held in police custody may be vulnerable for a variety of reasons. Particularly those least able to represent their own best interests control their behaviour and communicate their needs.

Her Majesty's Inspectorate of Probation (HMIP) report 'Who's Looking Out for the Children' (2011) identified a number of significant safeguarding concerns relating to the experiences of children whilst in police custody. A key concern identified in the report is the overnight detention of children and young people in police cells after police bail is denied, as opposed to transfer to local authority accommodation.

HMIP reiterated that Section 11 of the Children Act 2004, which "places a duty on key people and bodies to make arrangements to ensure their functions are discharged with regard to the need to safeguard and promote the welfare of children," applies equally to the police as it does to NHS bodies, local authorities and YOTS.

In conclusion, the HMIP report 'Who's Looking Out for Children' stated that: "...the children and young people who are processed through police custody are potentially the most vulnerable of the vulnerable...".

# 2. Purpose of the Protocol.

The aims of this protocol is to clarify the duties and responsibilities of the police, children's social care, the youth offending team and Clayfields secure children's home and to ensure they work together to safeguard the well-being and safety of children and young people and where it is practicable avoid their detention overnight in police cells.

The protocol also aims to reduce their risk of harm and to support their well-being and safety by recognising that where detention to a police cell is unavoidable it is essential that they should only be detained for as short a period as possible.

This protocol applies to children and young people from the age of 10 up to the age of 18, who are arrested and charged and are denied bail and for whom the police seek accommodation for from children's social care subsequent to their arrest and detention at a police station, but prior to formal remand from the courts.

***Please note that this protocol does not apply to young people arrested by the police for breach of bail conditions or on a warrant as these young people cannot be subject to a PACE transfer, and will be held in a police cell for court.***

### 3. Legal Framework.

When the police decide they have sufficient evidence to charge a child or young person with an offence, they have a number of options (depending on the circumstances) and any final decision would be undertaken in consultation with the relevant Youth Offending Team.

Under the Bail Act 1976, there is a general presumption that bail will be granted without conditions but there are exceptions that apply to children and young people. Section 38 of the Police and Criminal Evidence Act (1984) (PACE) stipulates that, where the police charge a child or young person with an offence, the custody officer must decide whether to grant or deny bail.

PACE specifies that a person may be refused bail and continue to be detained following charge if the custody officer believes the person would:

- Fail to appear in court
- Commit further offences

Or it is necessary:

- For their own protection
- To prevent harm to others
- To prevent interference with justice/investigation, or
- There is doubt about their identity/name & address

Additionally:

- If the custody officer believes that he ought to be detained in his own interests.

Under section 38 (6) of PACE a child or young person who is likely to be detained overnight must be transferred to local authority accommodation unless it is impracticable to do so.

Under section 21 (2) (b) of the Children Act 1989 the local authority must provide accommodation for children where the police make a request under section 38.

### 4. Procedures for seeking local authority accommodation.

A fundamental principle underpinning this protocol is that whenever possible a young person should be bailed rather than remain overnight in a police station. Children under 12 years old or without age appropriate competence or with special needs must always be bailed, or a transfer agreed to local authority accommodation.

If for any reason it is considered essential that a young person with special needs must be kept in a police station overnight, then the decision must be taken by a Senior Police Inspector on duty in consultation with the Emergency Duty Team (EDT) on-call Service Manager for Nottingham City Council or the EDT on-call Group Manager for Nottinghamshire County Council. All such cases must subsequently be reported to the Director of Children's Social Care.

Section 21 of the 1989 Children's Act directs that the local authority has a duty to accept any child or young person in response to a request from the police. It is for the local authority to determine the type of accommodation provided (family or friends, children's home, foster care) **unless** the child has attained 12 years **and** it is necessary to protect the public from serious harm. Where the latter apply the police shall request secure accommodation and ensure that the rationale for that request is clearly communicated to the local authority, as defined under the PACE Act.

When a child or young person is refused bail, immediate contact must be made with Children's Social Care during office hours and Children's Social Care EDT out of hours when requesting appropriate accommodation under the above.

The Custody Officer shall make a comprehensive detention log entry detailing to whom they spoke and the outcome, including the reasons why appropriate accommodation cannot be provided. A similar record of the discussions shall be kept by the local authority.

## 5. Arrangements for Transfer.

During normal office hours of 9am and 5pm, Monday to Friday, the police shall contact the court to establish if the young person will appear before 5pm. If, within normal office hours (above), the court indicates that this will not be possible, the police should contact Children's Social Care directly to request a transfer to local authority accommodation. Outside normal office hours (above) all requests for transfer should be made to the relevant EDT.

The police must nevertheless make arrangements to transfer the young person to local authority accommodation in **every** case unless:

- It is impracticable (impracticable should be taken as meaning only those cases which, because of time, distance or local conditions, arranging a transfer is not in the child or young person's best interest).
- There is a risk to the public of serious harm from that juvenile **and** no secure accommodation is available.

The lack of secure accommodation does not provide a justification for not transferring the young person to local authority accommodation **unless the young person is charged with a violent or sexual offence and** there is evidence of a risk of a further offence resulting in 'death or serious personal injury.' **In such cases, the police** shall consult with the relevant EDT who has indicated that secure accommodation cannot be made available.

Should the police make the decision **not** to transfer a young person to local authority accommodation, the reasons under the PACE Code of Practice (16.10) **shall** be clearly recorded on the form PACE 5 which must be sent (fax\secure email) to the local YOT and presented to the court the next morning.

The well-being of the child or young person is paramount when a decision to transfer to local authority accommodation is being made. It is acknowledged that it is preferable if the child or young person is afforded the opportunity to get a minimum eight hours sleep before an appearance in court. If the charging decision is made by the police after 10.30 pm or it is deemed that the young person will not arrive at the secure bed location before mid night, the duty custody inspector should ensure that these issues are considered when a decision to transfer is being made. There

should also be a clear rationale recorded for any decisions that have been reached.

Where a young person originates from a local authority **outside** of Nottinghamshire, the Local Authority or EDT local to the custody suite will be contacted by the police for the local authority to obtain agreement to the transfer from the young person's home authority.

In the absence of a willingness to accommodate from the 'home' authority or EDT outside of Nottinghamshire the Local Authority local to the custody suite will endeavour to work with the 'Home' area to resolve any issues and accommodate the young person until any such issues are resolved.

If the young person requires medical assessment or treatment whilst detained the police will ensure that it is provided, in line with current custody health care arrangements.

Children's social care and Nottinghamshire police will work together to ensure the placement provider receives sufficient information about the child or young person to ensure they can meet their needs and deal with any presenting risks.

The police will arrange transport for the child or young person to the accommodation placement. The placement will receive the young person transported to the establishment and provide overnight accommodation.

The police will complete and provide the placement provider with a copy of the PER Form (Prisoner Escort Record), to provide relevant information to the placement.

The local authority will make arrangements, appropriate to the accommodation arrangement put in place, to transport the child or young person to the next available court.

EDT must notify the YOT by secure email of all cases where the transfer to local authority accommodation did not take place and the rationale given by the police.

## 6. Escalation.

It is acknowledged that on occasions there might be a disagreement between the local authority social care staff and the police custody staff on how a child or young person should be dealt with under the protocol. If matters cannot be resolved either party shall request that matters are escalated for review by senior officers.

The duty Custody Inspector with responsibility for the custody suite where the child or young person is held shall perform this role for Nottinghamshire Police. A Head of Service to Children's Social Care (including out of hours) shall provide this function on behalf of the local authority.

Both parties shall ensure an accurate and exhaustive record of any escalation is kept.

Where it is not possible to reach an agreement following escalation, matters shall be referred subsequently to Nottinghamshire Safeguarding Children's Board for review.

## 7. Monitoring and Review.

This protocol shall be kept under regular review to ensure that it delivers its key aims, in particular reducing to a minimum the numbers of children and young people detained in police custody.

Nottinghamshire Safeguarding Children's Board will have a key role to play in monitoring the numbers of children and young people denied bail and the effectiveness of this protocol in meeting their needs.

Nottinghamshire Police will provide regular data reports on the numbers of children and young people detained by police; those denied bail and those for whom accommodation is requested from the local authority. This data will support the monitoring arrangements put in place by the Nottinghamshire Safeguarding Children's Board to determine the effectiveness of this protocol in safeguarding children and young people

## 8. Authorisation.

This protocol has been authorised by each of the participating agencies as set out below.

### **Signed on behalf of Nottinghamshire Police**

Name .....

Title.....

Date.....

### **Signed on behalf of Nottingham City Council**

Name .....

Title.....

Date.....

### **Signed on behalf of Nottinghamshire County Council**

Name .....

Title.....

Date.....

### **Signed on behalf of Clayfields secure Children's home**

Name .....

Title.....

Date.....

### **Signed on behalf of Nottinghamshire Safeguarding Children's Board**

Name .....

Title.....

Date.....



## 9. Appendices.

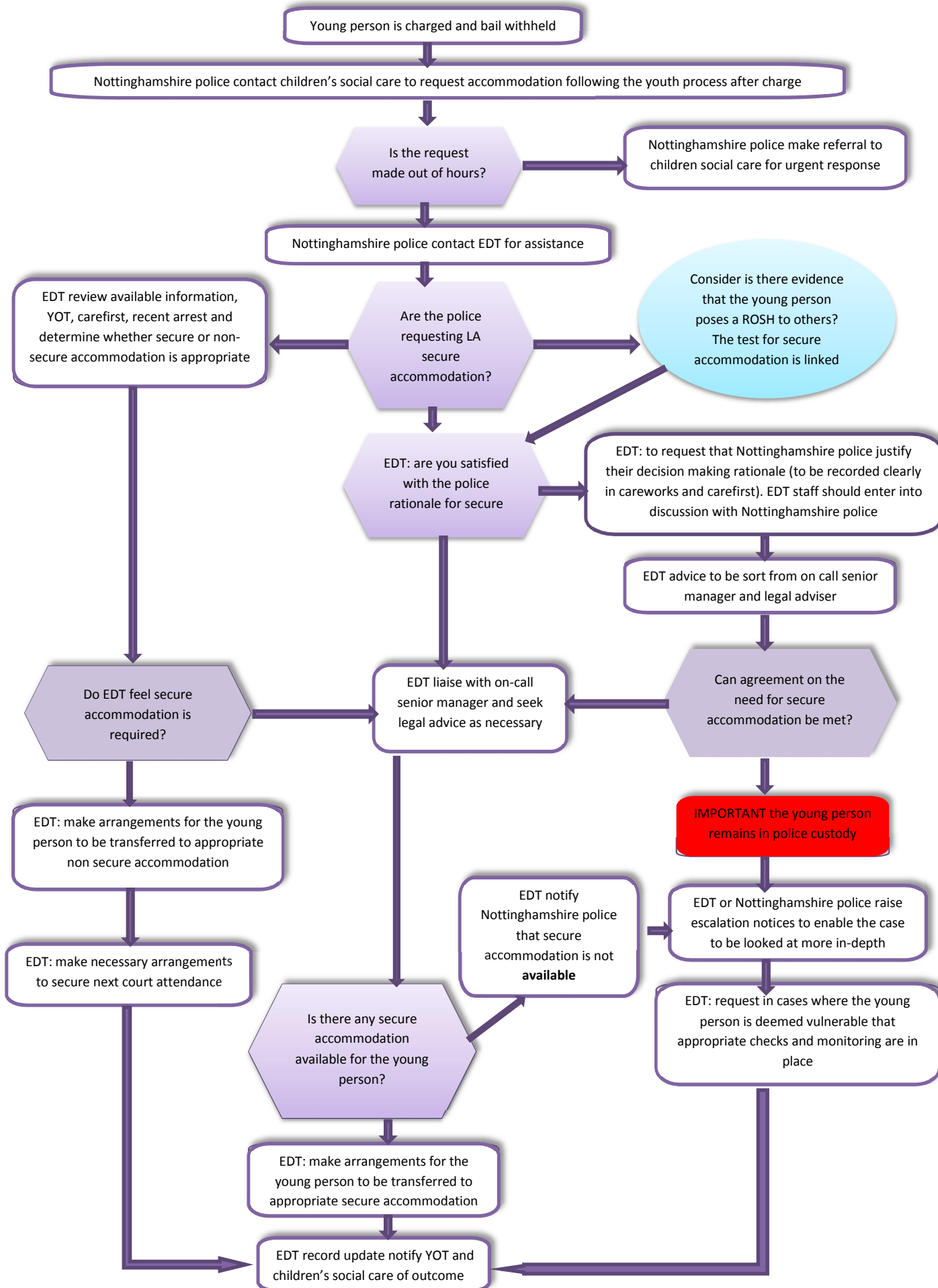
Appendix A – Local Authority Process for Secure Accommodation

Appendix B – Procedure for dealing with Youths after Charge

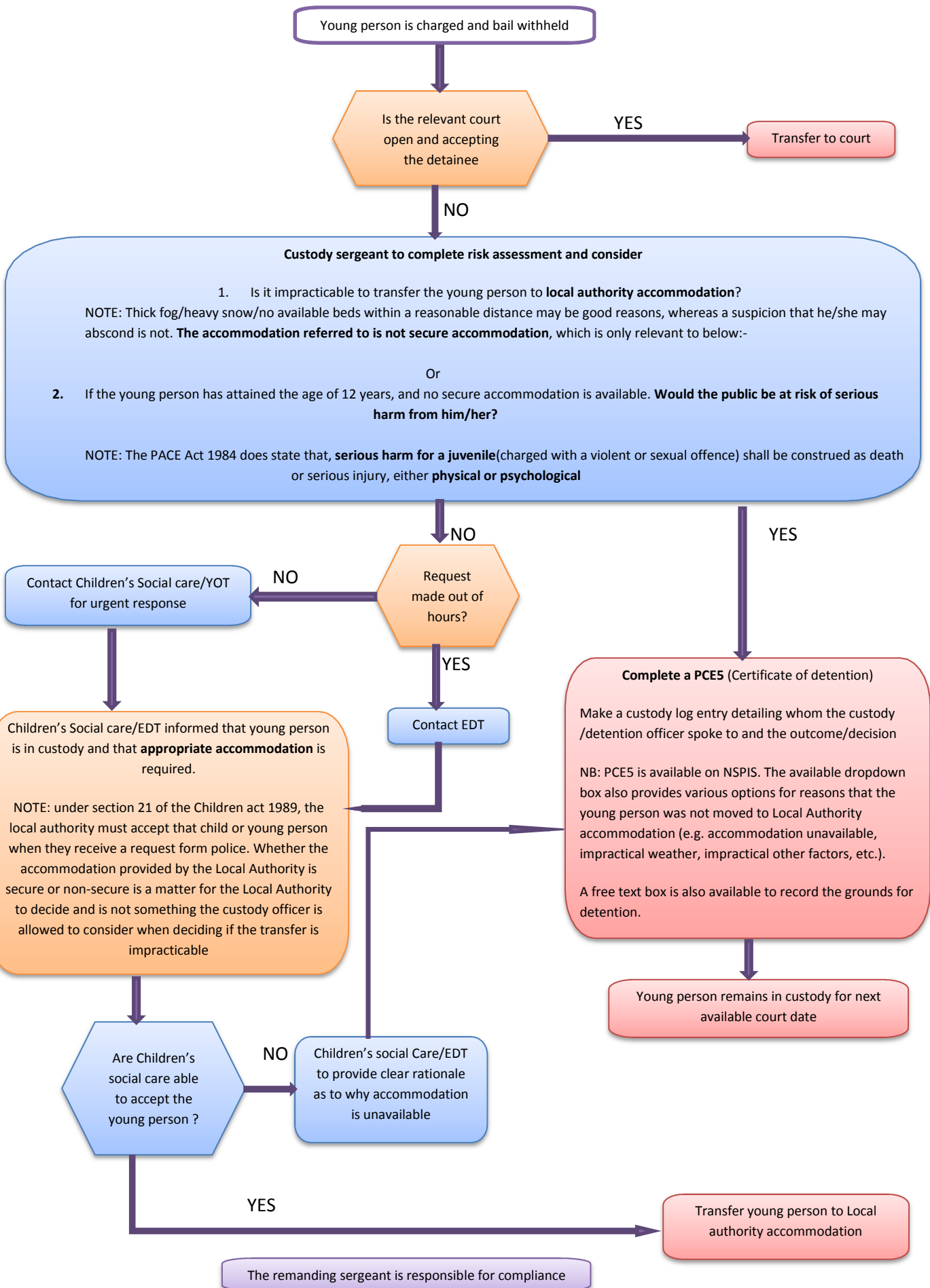
Appendix C - PACE 5 - Youth Detention Record

Appendix D - Contact List (to include email/fax and out of hours details)

### Appendix A - LA Process for Secure Accommodation



## Appendix B – Procedure for dealing with Youths after Charge To comply with Legal Aid, sentencing and Punishment of Offenders Act 2012 (LASPO)



## Appendix C

RESTRICTED – STAFF  
**JUVENILE DETENTION RECORD**

Custody Record No.

Surname

I certify that the above named juvenile was not moved to local authority accommodation for the following reason:

- The requirement to bring the juvenile before a court under s.46 PACE did not allow sufficient time to arrange for the juvenile to be moved to such accommodation;
- The local authority could not be contacted;
- Secure accommodation was not needed, but the local authority contacted was unable to provide any other accommodation;
- The juvenile has attained the age of 12 years, and secure accommodation was needed to protect the public from serious harm from him/her, but was not available and other local authority accommodation which was available, was not adequate to protect the public from that harm;

Although accommodation (secure or otherwise) was available, it was impractical to move the juvenile to that accommodation because:

- a) The necessary transport was not available,
- b) The prevailing severe weather conditions prevented the juvenile from being moved,
- c) Other factor,

The grounds for the decision are:

**DP has no accommodation elsewhere**

Signature

Surname

Rank

**PS**

No.

RESTRICTED – STAFF

**Appendix D - Contact List (to include email/fax and out of hours details)**

Name	Email	FAX	Out of hours No	Other number
<b>Nottingham City EDT</b>		0115 915 7959	0115 876 5600	
<b>Nottingham Children's Social Care</b>	Candf.direct@nottinghamcity.gcsx.gov.uk	0115 8761018	0115 8764800	
<b>Nottinghamshire Police</b>				
<b>Nottinghamshire County Council EDT</b>			0300 456 4546 • Monday to Thursday 5.00 pm to 8.30 am • 24 hours at weekends from 4.30 pm Friday to 8.30 am Monday • 24 hours during all public holidays	0300 500 8080 All other times.
<b>Nottinghamshire County Council Children's Social Care</b>				
<b>Nottinghamshire Youth Justice service</b>		01623 520089		
<b>Clayfields Secure Children's home</b>	placements.clayfields@nottsc.cjsm.net	0115 9170011		0115 9170010 (Tel & Referrals)
<b>Nottingham City YOT</b>	grp.nottinghamcity-yot@nottinghamcity.gov.uk.cjsm.net	0115 9159402	On-call Manager 07903 971080 Friday 5pm -9pm Saturday, Sunday & Bank Holidays 9am - 9pm	0115 9159400
<b>Nottinghamshire Safeguarding Children's Board</b>	info.nscb@nottss.gov.uk			0115 977 3935