

## SUNDERLAND YOUTH OFFENDING SERVICE PROCEDURES

### Section 2 – PART 3

#### DETENTION AND REMAND – THE APPROPRIATE ADULT

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**Reviewer:** YOS Management Team

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1.0	March 2013	Amendments from FW to Cautions	Paragraph 12	Deb Loraine	March 2014
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**ARREST AND DETENTION AT POLICE STATIONS**

**THE APPROPRIATE ADULT ROLE**

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## 1. INTRODUCTION

Prior to the establishment of Youth offending Teams it fell to Youth Justice Workers, Social Services staff, or Emergency Duty Social Workers to provide an Appropriate Adult at police stations. With the implementation of the Crime and Disorder Act 1998, the function became a statutory requirement. Section 38 of the act details the services to be provided by each local Authority and co-ordinated by Youth Offending Teams (Y.O.T). These include: -

“The provision of persons to act as an Appropriate Adult to safeguard the interests of children and young persons detained or questioned by police officers.”

## 2. LEGISLATION

Crime and Disorder Act 1998

Police and Criminal Evidence Act 1984 (P.A.C.E)

Codes of Practice issued by the home secretary under sections 60(10(a) and 66 of P.A.C.E

## 3. WHICH CHILDREN AND YOUNG PERSONS REQUIRE AN APPROPRIATE ADULT

Parts 1V and V of the Police and Criminal Evidence Act provide the statutory framework for the detention of suspects at the police station and their treatment and questioning.

The P.A.C.E. codes of practice require that:

- Anyone who appears to be under the age of 17 must be treated as a juvenile.
- An Appropriate Adult is contacted by the Custody Officer if a suspect is deemed vulnerable.
- Vulnerable groups must be cautioned in the presence of an Appropriate Adult.
- Any interview cannot proceed without an Appropriate Adult.
- The Appropriate Adult can request a solicitor.

P.A.C.E defines vulnerable persons as young people aged 16 years or under and those with mental health difficulties.

Appropriate Adults are also required for people who are considered vulnerable for reasons other than age, e.g. their mental state, their level of literacy, an auditory impairment, speaking difficulties, and those unable to understand English.

- a. The case of vulnerable adults aged over 18 years, the Appropriate Adult will be supplied by Social Services (Adult Services). Their remit does not include 17 year olds
- b. If an Appropriate Adult is required for a 17 year old deemed vulnerable by the custody officer, the Y.O.S will provide a response.
- c. In cases of young persons deemed vulnerable due to mental health issues, it may be Appropriate to consult with the Mental Health Team who may wish to be involved.

**NB (May 2013)**

**Following the Court of Appeal ruling that 17 year olds should also be required to have an Appropriate Adult, local practice is that the police will offer an AA on a voluntary basis and Sunderland YOS will provide an AA within the same process as currently applies. See attached email and document containing current Northumbria Police advice until further notice)**

**4. WHO IS AN APPROPRIATE ADULT?**

An Appropriate Adult in the case of a juvenile is defined as.

- The Parent/Carer or Guardian.
- A Social Worker
- A responsible Adult who is over eighteen, who is not a police officer or employed by the police

Parents or guardians should wherever possible, be the first option.

**5. WHEN CAN PARENTS OR GUARDIANS NOT ACT AS AN APPROPRIATE ADULT?**

Parents may be disqualified from acting as Appropriate Adults if?

- They are suspected of involvement in, victims of, or witnesses to, or have received prior admissions to the alleged offence.
- Reasonable efforts have been made to contact parents without success
- Parents refuse, or are unable to attend. (e.g. single parent with young children at home, illness etc.)

The custody officer must ensure that the disqualification criteria have been met, reasonable efforts have been made to contact parents, or refusal of parents is confirmed before requesting an Appropriate Adult from the Youth Offending Team.

When children who are looked after by the local authority, the Youth Offending Service will provide an Appropriate Adult (AA,) However where a child is accommodated voluntarily (Sec 20. children's act 1989) the parent will be given the opportunity to attend.

The Y.O.S. will provide a response in respect of looked after children on a 24hr Basis.

The Y.O.S. will provide a response in respect of non-looked after children between 09.00 and midnight.

**6. THE ROLE OF THE APPROPRIATE ADULT**

The presence of the Appropriate Adult is required at a number of key stages

- When the Young person is informed of his or her rights
- During Any Interviews
- During a strip or intimate Search
- The taking of Fingerprints, Photographs or DNA samples
- At the point of case disposal
- At a video capture for identification purposes or other Identification procedures

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**7. PROVISION OF APPROPRIATE ADULTS**

Responsibility for co-ordination of the AA scheme in Sunderland lies with the Youth Offending Service. The Operations Manager is responsible for managing the scheme which comprises: -

1. Rota of sessional workers.
2. The Y.O.S. maintains an out of hours P.A.C.E. duty rota staffed by managers on call to support the A.A. as required.
3. Newly appointed Sessional Appropriate Adults are trained in accordance with the YJB inset training programme.
4. Bi monthly Team meetings / Training sessions are held at Y.O.S. headquarters and all sessional A.A. are expected to attend a minimum of 3 sessions per year.

The full time Bail Support Officer (ER Team) will compile, co-ordinate and distribute Details of duty sessional workers and completed monthly sessional duty rotas to:-

1. Youth offending Service Admin Staff at Lambton House, 145 High Street West (0191 561 4000)
2. Emergency Duty Team (0191 5289110)

Appropriate Adult call outs are documented on a YOS (27) monitoring form, faxed to Sunderland YOS by the Appropriate Adult and recorded on the YOIS system.

**8. PROCEDURES WHEN POLICE REQUEST AN AA**

09.00 to 17.00

The Police contact the Youth Offending Service, at Lambton House, 145 High Street West (Office hours) (0191 561 4000). Admin staff take details of the young person, D.O.B, Offence, Police Station etc.

The Duty AA is supplied with the information, contacts relevant police station and responds as required.

Out of hours

The Police contact the Emergency Duty Team (out of hours) (0191 5289110) who take details of young person's D.O.B, Offence, Police Station etc. and refer to sessional duty rota and direct the on call sessional worker to respond. If for any reason they cannot contact the nominated on call worker they should refer to the PACE duty Manager, the full time Appropriate Adult or the Team Manager to ensure an alternative is found.

Having established that it is appropriate for the YOT to provide the service, the Appropriate Adult should ascertain the intentions of the police, e.g. is there any likelihood of a strip or intimate search being conducted? This may have implications of the choice of AA (male or female).

Initial considerations are: -

The Child's health and fitness for interview  
The Alleged Offence  
Are they to be interviewed - if yes - When?  
Has a solicitor been requested?

**9. PROCEDURES AT THE POLICE STATION**

The AA should inform the custody Sergeant of their arrival at the police station.

When shown through to the custody area the custody record should be requested, details from the custody record can then be checked and entered onto the AA monitoring form (YOS27).

The young person's rights can now be served in the presence of the Appropriate Adult.

Any person arrested and held in police detention has three basic rights that may be exercised at any stage whilst in police custody.

These are.

- The right to have someone informed of his or her arrest.
- The right to free legal advice.
- The right to consult the PACE codes of practice.

In most cases this procedure will be the first point of contact between the AA and the young person. The AA should introduce themselves, in order to reassure the young person that a private discussion will take place after the formality of the rights have been served.

Private consultation

During private consultation the role of the AA must be clearly explained.

The AA does not attend the police station merely as an observer, but is there to advise the young person. Make representations on his or her behalf; ensure that his or her treatment accords with that laid down in the codes of practice, to certify that any questioning is conducted properly and fairly and to facilitate communication between the police and the young person to function effectively, therefore the AA has to be proactive, prepared to advocate on behalf of the young person and to raise objections to police behaviour if necessary.

The AA should not discuss the young person's account of the alleged offence. AAs do not have legal confidentiality and cannot offer legal advice, for which a solicitor is available and this must be fully explained.

**10. LEGAL REPRESENTATION**

The roles of the solicitor and the AA are distinct, the former provides legal advice.

The AA by contrast should not provide legal advice.

The AA unlike the solicitor is not bound by any duty of confidentiality and is not protected by legal privilege. He or she could therefore be called as a potential prosecution witness.

Therefore it is good practice for the AA and the solicitor to have separate private consultations.

The solicitor may consult the AA about any legal advice given if they consider it appropriate and safe to do so.

It is good practice in all cases for the AA to insist on legal representation, even if the young person has declined it.

It is the policy of Sunderland Youth Offending Service that all young persons in Police Custody should have legal representation.



In the interests of impartiality, unless the young person requests a particular firm of solicitors, the duty solicitor should be used, if the young person refuses to have legal representation, every effort should be to change their mind.

The reasons and the importance of having a solicitor at the police station should be carefully explained.

If the young person continues to refuse legal advice, the young person should be urged to consider telephone consultation with the duty solicitor. Every effort must be made to ensure Young Persons in detention are legally represented

If despite all efforts, the Young Person still refuses a solicitor, the refusal to have legal representation against the AAs Advice, must be recorded on the AA monitoring form (YOS27) under additional information, also the custody sergeant should be informed of the young persons decision and asked to be record this on the young persons custody record.

The AA must demonstrate that they have done everything possible to ensure legal representation.

The custody sergeant may then authorise the interview to proceed.

## 11. **THE INTERVIEW**

The majority of interviews are tape recorded.

At the commencement of the interview the interviewing officer will introduce him or herself, everyone else will be asked to identify themselves, the interviewing officer will then caution the young person, and rights will again explained, if a solicitor is not present the AA should be satisfied that the young person understands the caution and their rights.

The AA should be advised that their role is not simply there to act as an observer but to advise the young person being questioned, (not legal advice) to ensure the interview is being conducted properly or fairly and to facilitate communication.

At anytime during the course of the interview the young person may request a private consultation with the solicitor or AA

The AA should keep a record of any significant statements the young person makes during the course of the interview on the AA monitoring form (YOS27).

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At the conclusion of the interview the young person will be asked if they have anything further to say or clarify anything, the AA will be asked if they have any final comments.

3 Tapes will be produced, a master copy, a police working copy, and one for the young person (if charged)

Interviews that are not taped are paper based; the same process as above will be followed.

The young person's replies will be written and recorded contemporaneously, at the conclusion of the interview the young person will be asked to read and sign the interview record, the AA should also check the interview record and countersign if in Agreement. This form of Interview usually follows as a result of a warrant or breach of bail offence, however such procedure could occur, when young person are interviewed at places other than police stations I.e. for offences where no power of arrest exists.

## 12. CASE DISPOSAL

Upon termination of the interview, the police must decide how to proceed with the case.

The police have a variety of options available to them mainly determined by the strength of evidence.

In the event that there is not sufficient evidence to charge, the police may: -

1. Detain the young person where the custody officer believes that further detention is necessary, to secure and preserve evidence, or to conduct further interviews.
2. Release the young person and take no further action
3. Release the young person on bail to return to the Police Station at a later date, pending further inquiries, (e.g. to arrange an identification procedure or to obtain forensic evidence.)

If this option is exercised the young person is issued with a bail form detailing any bail conditions and the dates, and times and the police station the young person must respond to bail, the custody officer will also inform the young person, verbally that it is offence not to respond to bail punishable by a fine, imprisonment or both.

The young person must sign to say that they understand.

It is the AAs responsibility to assist communication of understanding between the custody officer and the young person.

### **13. YOUTH CAUTIONS OR CONDITIONAL CAUTIONS**

A Youth Caution is a formal out-of-court disposal that can be used as an alternative to prosecution for young offenders (aged 10 to 17) in certain circumstances.

Before a Youth Caution can be administered the following criteria must be met (s66ZA(1) of the 1998 Act):

- (a) The constable decides that there is sufficient evidence to charge the young person with an offence;
- (b) The young person admits to the constable that they committed the offence, and
- (c) The constable does not consider that the young person should be prosecuted or given a youth conditional caution in respect of the offence.

Cautions were implemented as an alternative to the former Reprimand and Final Warning scheme as part of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and aim to provide a proportionate and effective resolution to offending and support the principle statutory aim of the youth justice system of preventing offending by children and young people.

Youth Cautions and other out-of-court disposals such as Youth Conditional Cautions do not have to be used in a set order and they are available if a young person has been previously convicted.

In the event that a Caution or Conditional Caution is proposed:

- The young person is advised that they will be required to undergo an assessment by the Youth Offending Service by the Custody Sergeant.
- A date will be given to the young person to return to the police station for the caution to be delivered.

For a second or subsequent Youth Caution, or where a young person has previously received a Youth Conditional Caution, the YOT has a statutory duty to carry out an assessment of the young offender and consider putting in place an intervention programme aimed at preventing re-offending. The YOT may carry out an assessment and offer a rehabilitation programme for a youth who has never received a Youth Caution or Youth Conditional Caution at their discretion.

The interventions attached to a Youth Caution are not conditional and there is no separate penalty for failing to comply with them, however failing to comply with this intervention can be cited in any future criminal proceedings.

The Appropriate Adult should therefore be able to explain to the young person the implications of a caution or conditional caution in general terms.

#### **14. CHARGE**

The decision to charge will result in the case being sent to court, the case papers will subsequently be sent to the crown prosecution service (CPS) who make an independent judgement as to whether prosecution should proceed.

In the case of a persistent young offender, (DYO) the investigating officer will, in most cases seek Advice from CPS before a decision of charge is made.

A juvenile must be charged in the presence of an AA.

At the point of charge, the custody officer will caution the young person again, he or she will be given a copy of the charge sheet, which includes details of the offence, the court at which the case will be dealt with in the first instance, and the date and time of the first appearance.

A tape recorded copy of the interview, will be provided to the young person, the young person and the AA or the solicitor are required to sign, to acknowledge receipt.

If the young person is not legally represented the AA should ensure the parents or guardian receive the interview tape. In the case of looked after children, a member of staff should be in receipt of the tape recorded interview.

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The tape recorded interview may be used to prepare the young person defence by his or her solicitor

Fingerprints, photographs and DNA samples may be taken for any recordable offence, at any time whilst the young person is in police custody without consent and should the Young Person object, reasonable force may be used to complete these procedures.

#### 15. **BAIL AND REFUSAL OF BAIL FOLLOWING CHARGE**

##### Bail following charge

Where the police decide to charge a young person with an offence, he or she will generally be released on bail to attend court. If the police believe it is necessary to ensure that the young person attends court to prevent further offending, to prevent interference with witnesses or otherwise obstruct the course of justice, they may attach conditions to bail, (Such as curfew, surety or condition of residence.)

Failure to comply with conditions of police bail renders the young person liable to arrest and overnight detention, but does not constitute an offence in its own right. Sec 47 PACE.

##### Refusal of bail following charge

Bail may be refused on the following grounds.

1. Has given false details or it has not been possible to ascertain his or her name and address.
2. Would fail to appear at court.
3. Would commit further offences on bail (where the original offence is imprisonable.)
4. Would cause physical injury to another person or cause loss or damage to property (where the original offence is non imprisonable)
5. Will interfere with the administration of justice or the investigation of offences.
6. Grounds to believe detention is necessary in that young person's interest.

In some instances the police maybe inclined to refuse bail because of concerns about the stability of the young person's home address, because of an indication from the parents or carers are not happy to have the young person home.

PACE. Section 38(6) which requires transfer to local authority accommodation does not deal with arrests on warrant for failure to surrender to bail, or for breach of bail conditions, in such cases the police may detain the young person overnight at the police station for appearance at the next available court.

**16. TRANSFER TO LOCAL AUTHORITY ACCOMMODATION (PACE BED)**

In all other cases where a juvenile is refused bail he or she must be transferred to local authority accommodation. (P.A.C.E. bed) unless the custody officer certifies it impracticable to do so.

There is a reciprocal statutory duty involved here.

1. The police are obliged to secure that the young person is moved to local authority accommodation.
2. The local authority is required to receive and accommodate the child. If for any reason the young person is not transferred the custody officer must certify why that has not happened and the certificate produced at court.

**Secure Accommodation**

In limited circumstances the police may request a transfer to secure accommodation where the child is over 12 years, and the custody officer certifies that no other form of local authority accommodation, would be sufficient to protect the public from serious harm.

In the event that criteria are met and no secure accommodation is available, the young person may be detained at the police station for the next available court.

The AA should clearly understand their precise role should a PACE bed or Secure Accommodation be requested by the custody officer.

It is important AAs follow set procedures.

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The pace duty manager must be consulted without exception where all young persons are refused bail and local authority accommodation or secure accommodation is requested

It is the PACE duty managers responsibility to liaise with Social Services to authorise and organise the provision of local authority accommodation or Secure Accommodation.

Sunderland Youth Offending Service, provide a rota of PACE duty managers (24 Hrs)

1. During office hours the court team manager or his deputy, will perform the role of P.A.C.E. Duty Manager and they can be contacted Via Y.O.S. during office hours (09.00 to 17.00). Tel. 0191 5614000)
2. At other times the P.A.C.E. Duty Rota is maintained, by contacting the Emergency Out of Hour's Team. Outside office hours (17.00 to 09.00) tel. 0191 5289110.
3. Both the YOS and the emergency duty team hold an up to date duty rota.
4. The PACE duty manager will advise the custody officer, of Availability of local authority accommodation, or Secure Accommodation.

The AA may assist in communication between the young person, the custody officer, and the PACE duty manager, and if required

In certain circumstances the Pace duty manager may request the AA to escort the young person to local authority accommodation

## **17. LEAVING THE POLICE STATION**

The majority of cases will result in the young person being released from police custody at this point the question of how the young person gets home naturally arises.

Young persons at the point of their release should be considered vulnerable and arrangements put into place to ensure they arrive safely home.

In the case of looked after children, the local authority has a duty of care and transport home should be arranged, either by the police, the AA or the Social Services E.D.T.

In the case of non looked after children whilst there is no duty to provide transport, we have a level of responsibility to ensure they arrive safely home, in such cases transport may be provided by the parent or guardian, the AA, the police or the E.D.T. The overriding consideration is the welfare and safety of the young person, however AAs will only provide Transport, if it is felt that the young person presents no danger to their own health and safety.



**From:** sharron.brennan.8217@northumbria.pnn.police.uk  
[mailto:sharron.brennan.8217@northumbria.pnn.police.uk]

**Sent:** 18 June 2013 12:38

**To:** Geoff.Buckley@northumberland.gov.uk; Jen.harrison@northtyneside.gov.uk;  
paul.brownlee@newcastle.gov.uk; Pam.Vedhara@southtyneside.gov.uk;  
susanbutler@gateshead.gov.uk; Louise Hill

**Cc:** nigel.bleazard.7930@northumbria.pnn.police.uk;  
alan.ritson.7722@northumbria.pnn.police.uk

**Subject:** JUDICIAL REVIEW – THE TREATMENT OF 17 YEAR OLDS IN CUSTODY  
[RESTRICTED]

Good afternoon everyone,

I attach a letter dated 13 June 2013, which is ACPO guidance regarding Appropriate Adults for 17 Year olds in Custody, but also mentions the principles which should inform the interviewing of 17 year olds not in custody.

We are seeking clarity of the guidance with the author, as this may impact on the way in which Police deal with 17 Year olds at cautioning surgeries, and as witnesses along with those in custody or interviewed as a voluntary attender at a police station, or elsewhere.

The Judicial Review related to a 17 year old in police custody - so is the guidance just relating to 17 year olds who are a suspect in an offence, which would therefore rule out any witnesses and those later receiving a Caution ?

My reading of the letter seems to be that, **in all cases** 17 year olds be provided with an appropriate adult to safeguard them in custody. The Sergeant should give the 17 year old their rights and establish whether they want the appropriate adult to be a parent or guardian, and if not, a professional appropriate adult should be summonsed. - Do YOS have the capacity for this additional work ?

It seems the police must keep the 17 year old in custody until the appropriate adult attends, regardless of the 17 year old's initial decision. The 17 year old is then given their rights again in the appropriate adult's presence. If at this point the 17 year old does not want an appropriate adult for a part or the whole of the custody process, then this should be respected and only then can the Police proceed with an interview.

Custody officers have already raised questions about this advice in that in these circumstances, a 17 year old who initially declines an appropriate adult may have to wait several hours in custody until the arrival of the adult, only to then repeat the fact that they do not require an appropriate adult. Only at this point is their decision respected.

This would hardly appear to be in the best interests of the 17 year old, increasing the time the person spends in custody before the interview can commence.

If the 17 year old has declined to have their parent/guardian informed or to have an appropriate adult they should be reminded at each review of their ability to change their mind.

I have spoken with our Force Custody Manager who has considered the below procedure for dealing with 17 year olds in custody.

An officer of at least the rank of Inspector will  
- speak to the detainee and ask for the reasons why the person does not wish to have an appropriate adult attend and / or parent or guardian informed.  
- record this in the custody record

- the detainee will confirm this in the custody record and sign it
- the Inspector or above, if satisfied will give authority for the interview to proceed and record it in the custody record.
- the interviewer will confirm all of the above at the start of the interview which will be recorded and remind the 17 year old that they can change their mind at any stage.

This seems like a practical response to avoid unnecessary delays in custody although appears contrary to what the guidance says.

The last line - The principles which underpin this should inform the interviewing of 17 year olds not in custody. - indicates the guidance relates to those interviewed as potential offenders, when not in custody.

As YOS managers you may have concerns as to whether we need to offer appropriate adults at cautioning surgeries. I believe that at present the YOT PC will ask the 17 Year old if they would like a parent/guardian or professional appropriate adult present, and record the decision on the police form Pros 154 (caution form). This guidance seems to indicate we need to have an appropriate adult present, at least initially, so we can ask if the 17 year old wishes to continue without them.

Could you let me have your thoughts as soon as possible so that we can seek clarity and inform all of those involved in the process.

Thank You

Sharron Brennan

YOT Sergeant