



## JOINT NORTHAMPTONSHIRE PROTOCOL

### FOR THE PROVISION OF LOCAL AUTHORITY ACCOMMODATION

### UNDER PACE 1984 (PACE TRANSFER)

Document version:			
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1.0	07/05/2021	CI Julie Mead DCI Johnny Campbell	
1.1	7/06/2021	Diana Amaral (NCT)	July 2021
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## **1.0 Aims**

- 1.1 The aim of this protocol is to safeguard children and young people through avoiding, so far as is practicable, their detention overnight in police custody following charge and the denial of bail.
- 1.2 The protocol is also intended to clarify the duties and responsibilities of agencies in the management of arrangements for the transfer to Local Authority Accommodation (LAA) of children and young people (aged 10 to 17 years) charged and denied police bail.

## 2.0 Scope

- 2.1 This protocol applies to children and young people (aged 10 to 17 years) who have been charged with offences and refused bail. It does not apply to young people who are charged with breach of bail, breach of the peace or arrested on warrant.
- 2.2 This protocol represents a voluntary agreement between the following organisations:
- Northamptonshire Police
  - Northamptonshire Children's Trust (NCT)
  - Northamptonshire Youth Offending Service (NYOS)
- 2.3 There will be instances where a child resident in one Local Authority Area is held in a custody suite situated within another Local Authority area. To avoid confusion the Designated Local Authority in whose area the child resides is legally the responsible authority, and in the first instance the custody suite must contact the responsible Authority for where the young person resides. This would be the Emergency Duty Service (EDT) for out of hours contact.
- 2.4 The protocol will be subject to annual review to ensure it is effective in meeting the key aims set out above.
- 2.5 Police, Northamptonshire Children's Trust and Northamptonshire Youth Offending Service are now part of the Golden hour protocols which ensures that within the first hour of detention social care are informed of all children that come into custody and the reason they are detained. This allows for essential information sharing to allow police to provide the best possible care for children when in custody and gives an early indicator to social care as to whether accommodation will be required for the child.

### 3.0 Background

- 3.1 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 detention. Local Safeguarding Children Partnerships in each Local Authority area are responsible for monitoring the recommendations within this report; in Northamptonshire, this responsibility sits with Northamptonshire Safeguarding Children Partnership (NSCP). A key concern identified in the report is the overnight detention of children in police cells after police bail is denied, as opposed to transfer to accommodation provided by a Local Authority (LAA). This concern is as relevant and as unresolved today as it was in 2011.
- 3.2 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 YOT. *Working Together to Safeguard Children* (2015) outlines how agencies should work together to safeguard and promote the welfare of children. This protocol sets out how this will be achieved for children and young people refused bail by the Police. 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, and the least able to represent their own best interests, control their behaviour, and communicate their needs."
- 3.3 The more recent Home Office Children's concordat reiterates these points and reaffirms UN Convention on the Rights of the Child-which agrees that custody should be used 'Only as a measure of last resort and for the shortest appropriate time' the Concordat recognises that agencies must work together to ensure that legal duties are Met. The concordat directs that where the Local Authority fails to provide accommodation it will reimburse the police.

## 4.0 Legal Context

### 4.1 Police Powers to Deny Bail

- 4.1.1 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.
- 4.1.2 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 as well as adults. 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 (with or without conditions).
- 4.1.3 PACE specifies that a person may be refused bail and continue to be detained following charge if the custody officer believes the person would (it should be noted that having no fixed abode is not a reason to deny bail):

- 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, for a child or young person:

- If the custody officer believes that they ought to be detained in their own interests.

- 4.1.4 Section 38 PACE (1984) details the requirements that a custody officer must consider before deciding to detain a person after he/she has been charged: Where a custody officer authorises an arrested child or young person to be kept in police detention under subsection (1), the custody officer shall ensure that the arrested child or young person is moved to local authority accommodation unless he/she certifies:

- (a) that, by reason of circumstances as are specified in the Police Juvenile Detention Certificate it is impracticable for him to do so;

It is acknowledged that whilst thick fog / heavy snow / no available beds within a reasonable distance may meet the impracticability test, a suspicion that he/she would abscond would not. The accommodation referred to is not secure accommodation, which is only relevant to (Section Bb) below. The Local Authority has discretion as to the type of accommodation provided and

Home Office Guidance states that this is not a factor the custody officer can consider when deciding if the transfer is 'impracticable'.

- (b) In the case of an arrested child who has attained the age of 12 years, that no secure accommodation is available and that keeping him/her in other local authority accommodation would not be adequate to protect the public from serious harm from him/her.

(PACE) 1984 states that 'serious harm for a juvenile (charged with a violent or sexual offence) shall be construed as death or serious injury, either physical or psychological'.

4.1.5 In all cases where denial of bail is being considered, Northamptonshire Police must have regard to the views of the person who has acted as Appropriate Adult. Where that individual is a representative of NCT or TAAS useful information may be available to assist in the making of that decision.

4.1.6 To ensure compliance with PACE, a Juvenile Detention Certificate will be completed in all cases where a child remains in custody. This form can be found in Appendix C. This shall be produced to the court before which he/she is first brought and sent to the Children's social Care Team/EDT and YOS via secure email.

#### 4.2 Local Authority Duty to Accommodate Child on Police Request

4.2.1 Section 21 of the Children Act 1989 directs that the Local Authority has a duty to accept the 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 (be that family or friends, children's home, foster care for example) 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.

4.2.2 When a child or young person is likely to be refused bail, immediate contact must be made with NCT's MASH during office hours, and the Emergency Duty Team (EDT) out of hours when requesting appropriate accommodation under the above. Beginning this process as early as possible is critical to the reduction in delay. Golden hour protocols will ensure that during the first hour of detention the nature of the offence and likelihood of bail, being refused will be shared upon detention being authorised.

4.2.3 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 NCT.

## 5.0 Arrangements for transfer

- 5.1 During normal office hours of 9am and 5pm, Monday to Friday, Police shall contact the Court to establish if the young person will appear before 5pm.
- 5.2 If, within normal office hours (above), the court indicates that this will not be possible, the police should contact NCT's MASH directly to request a transfer to Trust accommodation.
- 5.3 Outside normal office hours (above) all requests for transfer should be made to the relevant Emergency Duty Team (EDT).
- 5.4 The Police must nevertheless make arrangements to transfer the young person to Trust accommodation in every case unless:
  - It is impracticable (please note the very high threshold for impracticable, as above).
  - There is a risk to the public of serious harm from that child and no secure accommodation is available.
- 5.5 Police requests for non-secure accommodation must always be accepted, regardless of the type of accommodation the Local Authority then decides to place the child in. It is up to the Local Authority to determine the most appropriate type of accommodation for the child, according to their own criteria for secure and non-secure accommodation, and it has considerable freedom in the options open to it.
- 5.6 Should police make the decision not to transfer a young person to NCT accommodation, the reasons under the PACE Code of Practice (16.10) shall be clearly recorded on the Police Juvenile Detention Certificate which must be sent by secure email to the local YOT and presented to the court the next morning.
- 5.7 Once a charging decision is made by the police it is acknowledged that in exceptional circumstances transfer to NCT accommodation may be impractical and not in the best interests of the child or young person. This decision shall be clearly recorded on the custody record by the LA decision maker and referred to the Strategic Manager for Safeguarding & MASH or the on-call Strategic Manager in the absence of that individual or out of hours and the Duty Inspector. Any requests made very near to this time should ensure that the young person is 'transfer ready'.
- 5.8 Where a young person originates from the Northamptonshire area, police will contact the Local Authority or EDT (out of hours) relevant to the child's normal place of residence.
- 5.9 Where a young person originates from a local authority outside of Northamptonshire, the police must notify the Local Authority or EDT local to the custody suite. Where a child is from out of area it will be EDT or the Local Authority's responsibility to liaise with the Home LA, who is legally responsible for the child, to seek their permission or instruction.
- 5.10 If the young person requires physical or mental health medical assessment or treatment, whilst detained, the Police will ensure that it is provided, in line with current custody health care arrangements. In order to place the child or young person safely, MASH/EDT should request this information from the relevant healthcare provider and pass that information to Placement Management Service (PMS) or EDT if out of hours.

- 5.11 Where NCT worker is able to identify a suitable placement, these arrangements can be made through normal processes. Where no suitable placement is identified, or NCT worker disagrees with the decision to transfer this must be escalated to the relevant Strategic Manager without delay. Please see section 7.0 below for the escalation process.
- 5.12 NCT and Northamptonshire 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.
- 5.13 The responsible local authority has responsibility for arranging suitable transport to move the child to the arranged overnight accommodation. The placement will receive the young person transported to the establishment and provide overnight accommodation. If there is an unreasonable delay in transport, the Police will consider transporting the child a reasonable distance or assisting with the transport.
- 5.14 The Police will complete and provide the placement provider with a copy of the form PER Form (Prisoner Escort Record), to provide relevant information to the placement.
- 5.15 NCT will ensure appropriate arrangements are made to transport the child from the overnight accommodation to the scheduled Court hearing.
- 5.16 NCT must notify the YOT by email, as soon as possible, of all cases where the transfer to local authority accommodation did not take place and the rationale. Appendix D contains contact details for all teams involved in a transfer.



## **6.0 Arrangements during transfer**

- 6.1 Where the transfer is anticipated to be for more than one night, additional activity may be necessary to support the placement. Northamptonshire YOS Team can be approached by Placement Management Service or social Care during office hours: on Saturday and Sunday mornings, EDT can contact the YOS Duty Manager. Northamptonshire YOS will complete a full assessment and explore what additional activity can be offered to support the placement taking into account the young person's risk to themselves and risk to others.
- 6.2 NCT has the responsibility of making arrangements to collect the child or young person and transport them to the next available Court sitting in the County, as stated in 5.15. The responsible person transporting the child should remain with the child or young person until they are able to hand over responsibility to the YOS Court Duty Officer in person.
- 6.3 Northamptonshire YOS will provide a Court Duty Officer to attend any Court at which a child or young person is being produced following the withholding of bail, whether that child or young person has been PACE Transferred or not.

## **7.0 Escalation**

- 7.1 It is acknowledged that on occasion there might be a disagreement between social care staff and Police custody staff on how a child or young person should be dealt with under the protocol. If matters cannot be resolved, both parties should request that matters are escalated for review by senior officers.
- 7.2 The Custody Inspector between 1000hrs and 2200hrs, or the Duty LPA Inspector at other times will perform this role for Northamptonshire Police. If necessary, they can notify the Duty Superintendent, the Emergency Duty Team who will be able to advise on the on-call Strategic Manager for NCT (including out of hours). Please see Appendix D for contact arrangements.
- 7.3 Both parties shall ensure an accurate record of any escalation is kept.

## **8.0 Monitoring and Review**

- 8.1 Northamptonshire 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 NCT. For NCT, EDT can confirm what provision was put in place, and the outcomes. This data can support the monitoring arrangements put in place by the NSCP to determine the effectiveness of this protocol in safeguarding children and young people.
- 8.2 NCT and Police should monitor the numbers of children and young people denied bail and the effectiveness of the protocol and reassure the NSCP of the effectiveness of the services being provided. Where possible, this will include the views of or information from the child or young person concerned. This will be achieved via regular meetings between the three parties to this protocol at which all cases of children and young people either held by the Police for Court or PACE transferred will be reviewed and any necessary practice changes agreed. The frequency of these meetings will be agreed by the identified group. Where necessary, they may occur weekly and should not be less frequent than quarterly. A report will be made to the NSCP at least six-monthly to support their oversight of the protocol's implementation.
- 8.3 This protocol shall be kept under annual 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.

**9.0 Authorisation**

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

Assistant Chief Constable Ash Tuckley

Northamptonshire Police

Date: 19<sup>th</sup> July 2022

A handwritten signature in black ink, appearing to read 'Ash Tuckley', followed by a period.

Colin Foster, Chief Executive

Northamptonshire Children's Trust

Date: 31 May 2022

A handwritten signature in black ink, appearing to read 'Colin Foster', followed by a period.

Claire O'Keefe, Head of Service

Northamptonshire Youth Offending Service

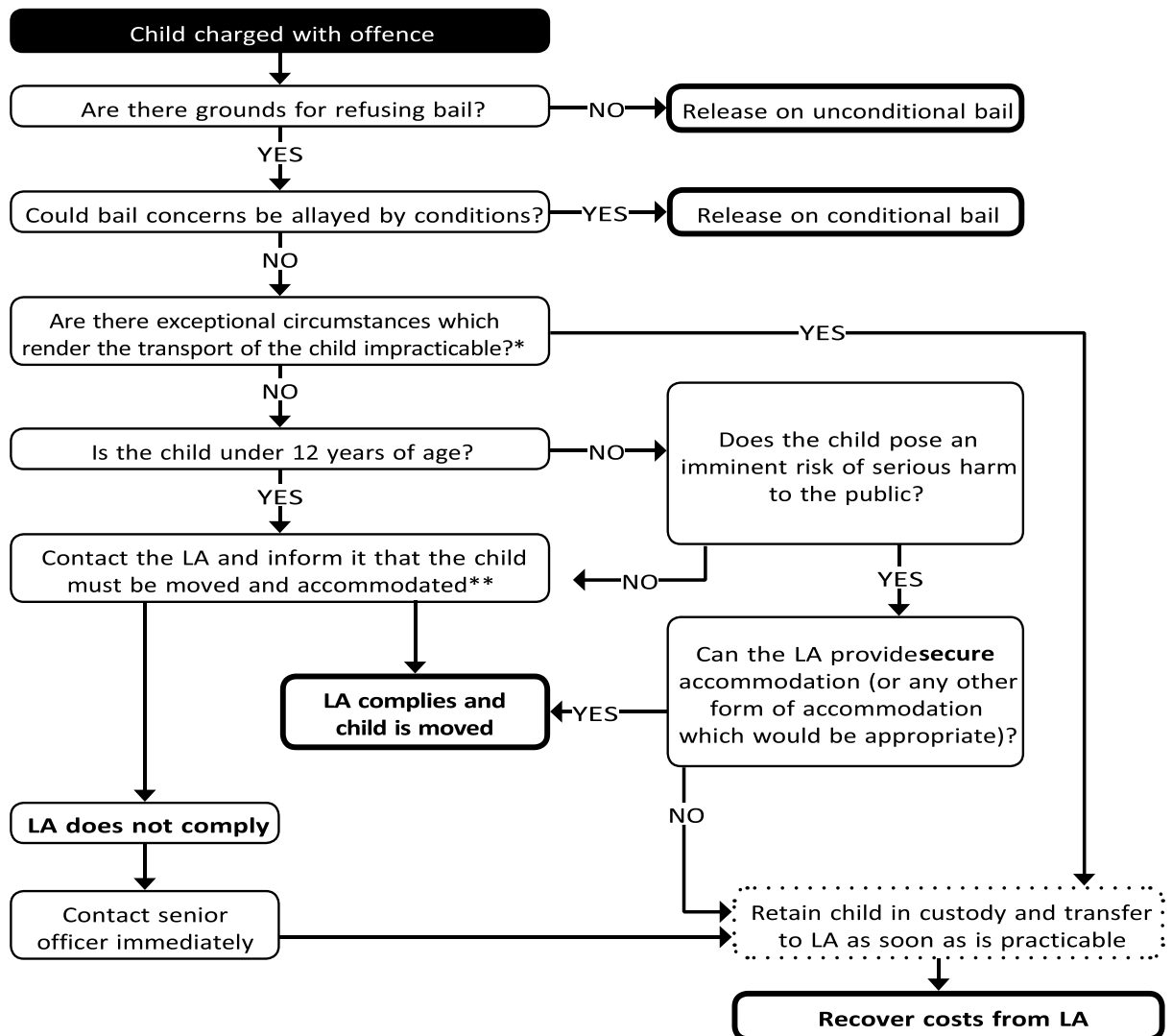
Date: 14.06.2022

A handwritten signature in black ink, appearing to read 'Claire O'Keefe', followed by a period.

## Appendices

Appendix A	Police Process for Children in Custody
Appendix B	Local Authority Process for transfer of children from police custody
Appendix C	Certificate of Detention of an Arrested Juvenile
Appendix D	Contact arrangements required for PACE Transfer
Appendix E	Concordat on Children in custody

## Appendix A: Police Process for Children in Custody



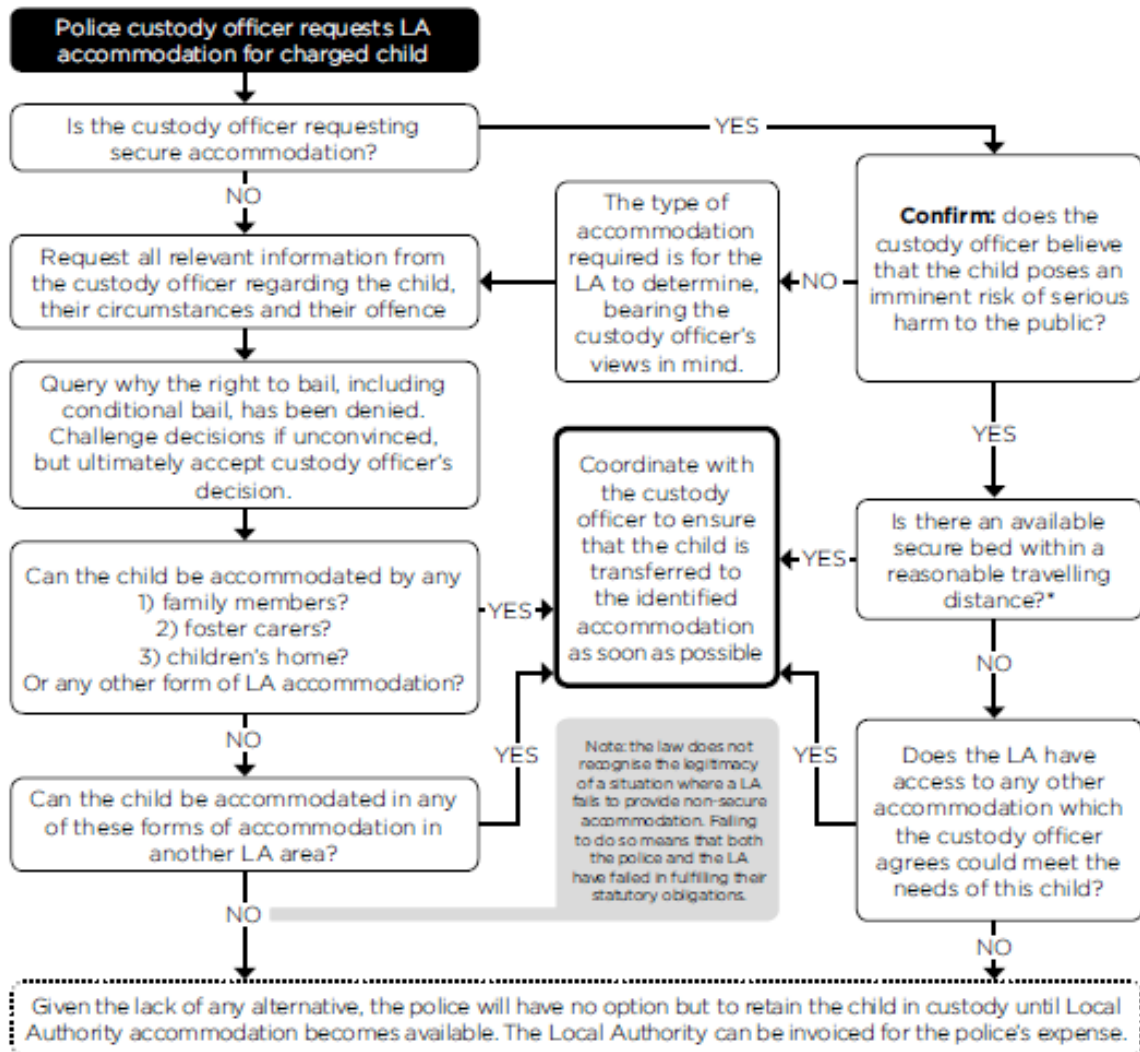
\* Circumstances which would render transfer impracticable do not include the availability of Local Authority accommodation, the nature of accommodation offered by the Local Authority, the child's behaviour, nature of offence, or the availability of transport.

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

Appendix B: Local Authority Process for transfer of children from police custody

## Local Authority process for transfer of children from police custody

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



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

## Appendix C: CERTIFICATE OF DETENTION OF AN ARRESTED JUVENILE

PACE 38(7) Certificate for Courts

<p>Arrest Summons Number (ASN):</p> <p>.....</p> <p>.....</p>	<p>Why was Local Authority accommodation not provided?</p> <p>.....</p>
<p>What type of Local Authority accommodation was requested?</p> <p><input type="checkbox"/> Non-secure accommodation</p> <p><input type="checkbox"/> Secure accommodation</p> <p><input type="checkbox"/> None, as transfer was impracticable</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>Explain why transfer was impracticable:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>Any other relevant details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

Guidance on what constitutes lawful grounds for detaining a child overnight in police custody can be found on the reverse of this certificate.

If you have doubts as to whether this was a lawful detention, please flag this case to the relevant force for review, via the form at [www.surrey.police.uk/flag-detention](http://www.surrey.police.uk/flag-detention).



## Appendix D: Contact arrangements required for PACE Transfer

### Placement Management Service

- Duty telephone number: 01604 367000
- Team email address: [placementmanagementservice@nctrust.co.uk](mailto:placementmanagementservice@nctrust.co.uk)

### EDT

- 01604 626938
- [DLEmergencyDutyteam.nct@NCTrust.co.uk](mailto:DLEmergencyDutyteam.nct@NCTrust.co.uk)

### Duty Inspector

- Dial 101, ask for the Control Room, then ask for the Duty Inspector

### YOS

- Business hours telephone – 01604 602400
- Secure email – [grp.northantsyot@northamptonshire.cjsm.net](mailto:grp.northantsyot@northamptonshire.cjsm.net) F.A.O. Area Manager – Specialisms
- Weekend Duty Manager – EDT have access to YOS Court Outlook Calendar
- **For golden hour contacts only:** [NYOS@NCTrust.co.uk](mailto:NYOS@NCTrust.co.uk)

**Appendix E: Concordat on Children in custody**



Concordat\_on\_Childr  
en\_in\_Custody.pdf