

## Practice Guidance on Safeguarding Children and Young People in Police Custody and the Secure Estate

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### 1. Introduction

The NSCB has produced this guidance to meet the requirement to improve arrangements to safeguard children and young people placed in police custody and custodial establishments as set out in government guidance LAC 26 (2004) 'Safeguarding and Promoting the welfare of children and young people in Custody'.

Children and young people who are arrested and placed in Police custody, are held either at Northampton Criminal Justice Centre or Corby Police station.

Children and young people under the age of 18 who are remanded to Youth Detention Accommodation or given custodial sentences are detained in one of the following:

- A Young Offenders Institution (YOI);
- Secure Training Centres;
- Local Authority Secure Children's Homes.

All females remanded to Youth Detention Accommodation or sentenced to custody will be placed in a Secure Training Centre or Secure Children's Home.

Children and young people detained in a secure forensic unit by virtue of a hospital order are not covered within this protocol; these young people are subject to health as distinct from criminal justice procedures.

There are no Young Offenders Institutions (YOI) in Northamptonshire, and no Local Authority Secure Children's Homes. Rainsbrook Secure Training Centre is on the Northamptonshire/Warwickshire border. Therefore, the vast majority of young people remanded to Youth Detention Accommodation or sentenced to custody are placed outside Northamptonshire.

The NSCB is committed to promoting and safeguarding the welfare of all such children and young people. The placement of Northamptonshire young people through the above process means that the NSCB still retains safeguarding responsibilities for them.

Practitioners working with this client group need to remain mindful that for some children and young people there are significant dangers inherent in being detained in the secure estate and that they may be at risk of:

- Suicide;
- Self-harming;
- Mental health problems;
- Bullying;
- Involvement in further criminal activities, and or drug abuse, amongst other things.

## **2. Diversity**

The NSCB is bound by the provision and spirit of the relevant legislation and all its work is informed by a commitment to the promotion of diversity. All constituent agencies are required to ensure that their services are equally underpinned by such commitment.

The NSCB believes that the welfare of children is of paramount concern, and that their individual needs and rights should be respected. Those working with children and young people should be sensitive to the diversity of children's circumstances and backgrounds (e.g. in respect of their age, gender, physical and mental ability, ethnicity, culture and religion, language, sexual orientation and socioeconomic status).

These principles underpin all NSCB policies, procedures, protocols and training.

The NSCB will use its influence to promote these principles and will seek wherever possible, both in its own work and that of its partner agencies, to eliminate discrimination, harassment and attacks on any group or individual.

We will monitor the effectiveness of our work, and that of partner agencies, in these areas, and continuously seek to improve our performance.

## **3. Children and Young People in Police Custody**

The rules governing the 'care' of children and young people in police custody are largely determined by the Police and Criminal Evidence Act, 1984 (PACE). Currently, Police and Criminal Evidence Act, 1984 (PACE) require that appropriate adult services for children in police custody are provided to those aged 18 and under. In most cases a parent or carer acts as the appropriate adult.

In Northamptonshire, the provision of appropriate adult services for young people for whom a parent or carer is not available is the subject of a contract between Northamptonshire Youth

Offending Service, Catch22 and NCC Children's Services. All appropriate adult work with young people is undertaken by Catch22, during office hours and out of hours (evenings and weekends).

In Northamptonshire a [Remand to Local Authority Accommodation or to Youth Detention Accommodation Procedure \(Northamptonshire Children's Services Manual\)](#) governs the joint working arrangements for transferring young people aged 10 to 16 years from police custody to local authority accommodation as an alternative to them being held overnight in police cells.

From October 2015, this will be extended to 17 year olds held by the Police, and they will be treated in the same way as the 10-16 age group. This change has been brought about by The Criminal Justice and Courts Act 2014. The Home Secretary and the Secretary of State jointly wrote to local authorities in January 2015, to confirm that this element of the legislation will be implemented in October 2015.

The only exceptions to this will be those young people in breach of bail, or those arrested on a Court warrant.

A sound safeguarding system for children and young people detained in police custody should prioritise the following elements:

- Detention in the police station is for a minimum period of time and children and young people who are charged but cannot be released on bail are transferred to the care of the local authority in a timely fashion;
- Transfer of children and young people to local authority accommodation (under PACE) is monitored at an operational and strategic level;
- Safeguarding needs of children and young people in police custody are robustly prioritised, monitored, reviewed and met;
- Custody staff are suitably trained in safeguarding and managing young people in custody;
- Robust, informed and independent scrutiny is provided by suitably trained staff that are able to challenge inappropriate decision-making and activity.

#### **4. Children and Young People Remanded to Youth Detention Accommodation**

Court remands to the secure estate are made by the Youth Court at the pre-sentence stage where certain legal criteria are met. The Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) made some significant changes to various aspects of youth justice legislation as follows:

- The creation of a single remand framework to replace the previous complex arrangements (with seventeen year olds being treated as children rather than adults);
- Transferring greater financial responsibility for remands to youth detention accommodation (secure accommodation including youth prisons Young Offender Institutions (YOIs) from the YJB to local authorities to incentivise effective oversight; and

- The extension of 'looked after child' status to all remanded young people including those remanded to YOIs.

The provisions came into force on 3 December 2012.

Where the young person is subject to a remand to Youth Detention Accommodation the young person acquires 'Looked After' status and Northamptonshire Children's Services becomes the responsible parent for the length of the remand. Such young people are placed in a YOI, Local Authority Secure Children's Home (LASCH) or one of the 3 Secure Training Centres (STCs) in England and Wales. The age and vulnerability of the young person will determine the type of establishment they are placed in.

A co-working agreement in relation to children and young people in Court facing a remand to Youth Detention Accommodation and guidance on the role of the local authority when a young person becomes looked after by virtue of a remand to Youth Detention Accommodation can be found in the Looked After Services section of the [Northamptonshire Children's Services Manual](#).

## **5. Children and Young People Sentenced to Custody**

Children and young people who are sentenced to custody usually do so via a Detention and Training Order or for the most serious and exceptional offenders via the sentencing framework laid out in the dangerous offenders provisions of the Criminal Justice Act 2003 and Section 91 of the Powers of Criminal Court Act 2000.

Unless a young person is already subject to a Care Order, the young person who has been subject to a remand to Youth Detention Accommodation loses his/her 'Looked After' status on sentence although Children's Services should continue their involvement with the young person because he/she may have Care Leaver/Former Relevant Care Leaver status or be deemed to be a child in need.

Detention and Training Orders have a maximum length of 2 years and a minimum period of 4 months; half the time is spent in the secure estate and the other half is spent in the community where the young person is subject to a licence supervised by the Youth Offending Team. Sentences are much longer for young people sentenced under the Dangerousness and Section 91 provisions.

Guidance on the responsibilities of the local authority in relation to looked after children sentenced to custody can be found in the [Looked After Children and Young People in Contact with Youth Justice Services Policy, Northamptonshire Children's Social Care Manual](#).

## **6. Safeguarding Responsibilities of the Secure Estate**

Safeguarding the young person throughout his or her placement is a fundamental responsibility of the Secure Estate and each establishment's policy and procedure will be spelt out in detail in local procedures and documents. The landmark judgement of Justice Munby in 2002 makes clear that children in custody have the same rights and entitlements under the 1989 Children Act and human rights legislation as those children in any other setting. Fundamental to the list of rights and

entitlements is the right to be kept safe. Furthermore, the Children Act 2004 places for the first time explicit responsibility for safeguarding and promoting welfare on providers of custody for children and young people. The Act also insists on the involvement of secure establishments with their Local Safeguarding Boards.

Each secure establishment must have written policies and procedures spelling out how it will safeguard the child for the length of time he/she is in custody. These policies and procedures will cover the secure establishment's procedure regarding the initial reception of the young person, the investigation and resolution of bullying incidents and child protection concerns, the rewards and sanctions policy of the establishment, the management of challenging behaviour, healthcare and substance misuse procedures, complaints and advocacy processes and finally arrangements for allowing the young person to have contact with his/her family and friends.

Each custodial centre holding those aged under 18 should have in place an annually reviewed safeguarding children policy. The policy is designed to promote and safeguard the welfare of children and should cover issues such as child protection, risk of harm, restraint, recruitment and information sharing. A safeguarding children manager should be appointed and will be responsible for implementation of this policy.

Detailed guidance on the safeguarding children policy, the roles of the safeguarding children manager and the safeguarding children committee, and the role of the establishment in relation to the LSCB can be found in Prison Service Instruction (PSI) 08/2012 'Care and Management of Young People'.

Section 11 of the Children's Act 2004 places a duty on:

- Governors/Directors of Prisons and Young Offender Institutions;
- Directors of Secure Training Centres; and
- Youth Offending Teams/Services.

Working Together 2015 states that these organisations should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children, including:

- A clear line of accountability for the commissioning and/or provision of services designed to safeguard and promote the welfare of children;
- A senior board level lead to take leadership responsibility for the organisation's safeguarding arrangements;
- A culture of listening to children and taking account of their wishes and feelings, both in individual decisions and the development of services;
- Arrangements which set out clearly the processes for sharing information, with other professionals and with the Local Safeguarding Children Board (LSCB);
- A designated professional lead (or, for health provider organisations, named professionals) for safeguarding. Their role is to support other professionals in their agencies to recognise

the needs of children, including rescue from possible abuse or neglect. Designated professional roles should always be explicitly defined in job descriptions. Professionals should be given sufficient time, funding, supervision and support to fulfil their child welfare and safeguarding responsibilities effectively;

- Safe recruitment practices for individuals whom the organisation will permit to work regularly with children, including policies on when to obtain a Disclosure and Barring Service check;
- Appropriate supervision and support for staff, including undertaking safeguarding training;
- Employers are responsible for ensuring that their staff are competent to carry out their responsibilities for safeguarding and promoting the welfare of children and creating an environment where staff feel able to raise concerns and feel supported in their safeguarding role;
- Staff should be given a mandatory induction, which includes familiarisation with child protection responsibilities and procedures to be followed if anyone has any concerns about a child's safety or welfare; and
- All professionals should have regular reviews of their own practice to ensure they improve over time;
- Clear policies in line with those from the NSCB for dealing with allegations against people who work with children. An allegation may relate to a person who works with children who has:
  - Behaved in a way that has harmed a child, or may have harmed a child;
  - Possibly committed a criminal offence against or related to a child; or
  - Behaved towards a child or children in a way that indicates they may pose a risk of harm to children.

Safeguarding decision-making applies at the earliest possible stage and its effectiveness is premised on a joint approach by the local YOT, Children's Services Department and the relevant secure establishment.

The investigation of child protection incidents that take place within the secure institution is the responsibility of the relevant local authority within whose boundary the secure institution is located. The home authority of the child/young person concerned is not the investigator in these circumstances (although the home authority's YOT Worker and Social Worker if involved must be consulted and must share information as required).

## **7. Safeguarding Children Practice in the Secure Estate**

Most young people who become subject to a custodial remand and all young people who are sentenced to custody will already be known to the Youth Offending Team. Every young person

subject to a Detention and Training Order, Section 91 Order or remand to Youth Detention Accommodation must have an allocated YOT Worker within 1 working day of sentence. It is the YOT Worker's responsibility to visit the young person at least monthly if not more if the level of risk so requires, maintain regular contact with the young person's parents, attend all reviews and maintain regular communication with the secure establishment staff. Northamptonshire YOT holds detailed working procedures for YOT Workers regarding young people subject to Detention and Training Orders.

The YOT Worker will complete an assessment tool with the young person and usually his/her parents called ASSET. ASSET offers a comprehensive assessment framework and requires the YOT Worker to identify all aspects of a young person's behaviour, thought processes, physical and mental health, family and social circumstances that are relevant to his or her offending.

The young person's vulnerability is a critical strand in ASSET and the YOT Worker is required to identify any factors that are relevant to the vulnerability of the young person. Vulnerability means the possibility of harm being caused to the young person. Vulnerability factors include factors related to child protection, bullying, reckless conduct, self-harm or suicidal behaviour. It is vital that if the young person is already open to Children's Services because he/she is subject to a Care Order, has Care Leaver status, is a child in need of protection or 'looked after' by virtue of a remand to Youth Detention Accommodation, or is accommodated at the time of the court proceedings that the allocated Social Worker and the YOT Worker share their assessment information as early as possible in the process i.e. during the court proceedings prior to sentence. The Social Worker must alert the YOT worker if there is any known history or concern regarding vulnerability.

If the young person is Looked After or has Leaving Care status the Social Worker must share information from the Looked after Children documentation or Pathway Planning documentation with the YOT Worker. Relevant information held about the young person by all agencies will be disclosed to the YOT worker for the purposes of preparing ASSET. Both the Social Worker and the YOT Worker must share information about the young person and begin to plan together to address the young person's safeguarding needs.

Where a child/young person is accommodated under Section 20 of the Children Act immediately prior to his/her placement in custody, the case will remain open to a Social Worker to enable an assessment to take place as to the young person's accommodation needs on release from custody. If the assessment indicates a need for accommodation after release, then the Social Worker will remain in close contact with the YOT Worker whilst the young person is in custody attending sentence planning meetings as appropriate. Likewise if the YOT Worker establishes during the period that the young person is in custody that there may be a need for the young person to be accommodated after release and/or is suffering or likely to suffer Significant Harm on leaving the establishment, the YOT Worker will immediately make a referral to Children's Services for an assessment to commence.

Where it is identified that the young person is at immediate risk of self harm and/or suicide, the YOT Worker will request the Court Cells staff to immediately open an ACCT Transport Warning Form. This form is carried by the staff who transport the young person to the secure establishment. This form will in turn trigger the ACCT process (involving intensive monitoring of the young person's behaviour) when the young person is admitted to the YOI.

Where a Social Worker is involved, the YOT Worker needs to ensure that the Social Worker is appraised of the young person's progress in the secure establishment and any other relevant information (and vice versa). This appraisal will include the Social Worker receiving a copy of the relevant sentence planning documentation which records the outcome of each Sentence Planning Meeting. In essence the YOT Worker acts as a 'bridge' between the secure establishment, the young person and the community from whence the young person came and to where in most cases he/she will return.

Where a child or young person is looked after by the Local Authority they will have an allocated Social Worker. It is the expectation that during the period of the custodial sentence the case will remain active to the same Social Worker. The YOT Worker will keep the Social Worker informed of developments whilst the young person is in custody and vice versa. The Social Worker will also maintain direct contact with the young person as the responsible parent. The Social Worker will be fully involved in the planning for the young person's release.

Every young person placed in the Secure Estate should have a Keyworker (called a Personal Officer in the YOI) for the period he/she is in custody. This person's role is to have a special concern for the young person's well-being and progress in custody and to make himself/herself available so that the young person can discuss all issues of concern and any requests. The Keyworker has a special duty to keep in contact with the YOT Worker and also be the point of contact for the family and any outside agencies (including the Social Worker). It is vital the Keyworker alerts the YOT Case Worker, family and the Social Worker as appropriate to any safeguarding concern at the time of its initial presentation, whether this is related to self-harm, child protection, bullying or physical restraint incidents. Open communication is intrinsic to the safeguarding of the young person. The role of Keyworker – and more generally his/her immediate colleagues – cannot be overestimated given that they are the primary carers for the 100 waking hours each week when the young person is not in education.

All YOIs have a Sentence Planning Department which will be staffed by personnel usually seconded from the local Youth Offending Team. They have an important role to play in ensuring the smooth running of the sentence planning process including 'looked after children' processes and maintaining good communication between the young person, prison staff and the home Local Authority and Youth Offending Team. In addition YOIs have Children's Services Practitioners who are seconded from the local Children's Services Department. These members of staff have an important role to play in ensuring that the needs of vulnerable young people in YOIs are highlighted, particularly young people who have a Care history or status.

Safeguarding the young person is as important a concern for the YOT, the Secure Estate and Children's Services as the addressing of the causes of the young person's offending behaviour. This protocol is written in the light of the tragedies that have befallen young people who have been harmed or in some cases have lost their lives because safeguarding procedures were not sufficiently robust. The key is open and timely communication about safeguarding issues between the young person, the secure establishment staff, parents, the YOT Worker and the Social Worker where involved.

The Northamptonshire Safeguarding Children's Board and its constituent agencies affirm its commitment to safeguarding the welfare of young people placed in the secure estate.