JOINT MERSEYSIDE PROTOCOL
FOR THE PROVISION OF LOCAL AUTHORITY ACCOMMODATION
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.

1.3 The protocol also reflects that children and young people are a protected group with specific vulnerabilities.

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:

- Merseyside Police
- Liverpool City Council
- Wirral Metropolitan Council
- Sefton Council
- Knowsley Council
- St Helens Council

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 Local Authority in whose area the child resides will be the responsible authority, but, in the first instance the custody suite where the child or young person is being held will contact the Local Authority for that locality.

2.4 The protocol will be subject to regular review to ensure it is effective in meeting the key aims set out above. This version (Version 6: October 2015) has been amended to incorporate the extension of Section 38 (6) Requirements to 17 Year Olds from October 2015.

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 Authority Safeguarding Boards are responsible for overseeing the recommendations within this report. 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).

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 YOS. 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 processed through police custody.

3.3 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.”

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) and any final decision would be undertaken in consultation with the relevant Youth Offending Service (YOS).

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:

- 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 he ought to be detained in his 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 certificate (PACE 5 Certificate of Youth Detention - Appendix C), 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 (6)(b) below. The Local Authority has discretion as to the type of accommodation provided and Home Office Guidance states this is not a factor the custody officer is allowed to consider when deciding if the transfer is 'impracticable'.

(b) in the case of an arrested juvenile 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 The only determination a custody officer has to make in respect of secure accommodation is if it is required to protect the public from serious harm which is an extremely high threshold. When this threshold test has not been made it is for the Local Authority to determine the appropriate placement of children and young people. Judgements as to the likelihood of juvenile absconding should not form the basis of requests for secure accommodation.

4.1.16 Children and young people, of any age arrested for breach of bail (Bail Act 1976 Section 7) or on a warrant not backed for bail (Magistrates Court Act 1980, Section 13) cannot be transferred as described above and must be kept in police cells.

4.1.6 In order to ensure compliance with PACE, a PCE 5 will be completed in all cases where a juvenile remains in custody. This shall be produced to the court before which he/she is first brought.

4.2 Local Authority Duty to Accommodate Child on Police Request

4.2.1 Section 21 of the 1989 Children's Act directs that the Local Authority has a duty to receive and provide accommodation for the child or young person in response to a request from the police. It is for the Local Authority to determine whether 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.

4.2.2 When a child or young person is refused bail, immediate contact must be made with the Local Authority Children’s Social Care Service during office hours and the Social Services Emergency Duty Team (EDT) out of hours when requesting appropriate accommodation under the above.

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 the Local Authority.

4.2.4 In those cases in which a child under the age of 13 requires secure accommodation (and there is agreement that the threshold set out in PACE 38(6)b is met) the approval of the Secretary of State will be required. The Department for Education (DfE) has in place an arrangement to achieve this as set out in Appendix E to this protocol. The DfE also operates an out of hours emergency service in support of these arrangements (0207 340 7057).

5.0 Arrangements for transfer

5.1 The obligation to transfer a child\young person to local authority accommodation applies as much to a child and young person charged during the day time as to those held overnight, subject to requirement to bring the child\young person before a court.

5.2 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 the Local Authority Social Care Team directly to request a transfer to local authority 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 local authority accommodation in every case unless:

- It is impracticable
- There is a risk to the public of serious harm from that juvenile and no secure accommodation is available.

5.5 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 have indicated that secure accommodation cannot be made available.

5.6 Should 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 YOS and presented to the court the next morning.

5.7 If the charging decision is made by the police after 10.30 pm it is acknowledged that transfer to Local Authority accommodation is impractical and not in the best interests of the child or young person. This decision shall be clearly recorded. 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 Wirral, Sefton, Knowsley, St Helens or Liverpool, police will contact the Local Authority or EDT (out of hours) relevant to that custody suite. Once notified, the Local Authority will in turn notify the responsible Local Authority for them to take responsibility for delivering the requirements of this protocol.

5.9 Where a young person originates from a local authority outside of Merseyside, the Local Authority or EDT local to the custody suite will be contacted by the Police for the LA to obtain agreement to the transfer from the young person’s home authority.

5.10 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.

5.11 The Local Authority and Merseyside 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.

5.12 The responsible Local Authority 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.

5.13 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.

5.14 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.

5.15 In support of this protocol Barton Moss SCH have agreed to provide access to a secure bed(s) on a spot purchase basis and subject to availability for young people who meet the 38(6)b threshold. Barton Moss can be contacted via mike.kelly@salford.gov.uk or telephone number 0161 686 900.

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

5.17 It should be noted that if a child or young person has been kept in police custody overnight post charge for any reason other than the impracticability of transfer, any reasonable expenses for their accommodation shall be recoverable from the local authority in whose area they are ordinarily resident.

6.0 Escalation

6.1 It is acknowledged that on occasion there might be a disagreement between Local Authority 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 either party shall request that matters are escalated for review by senior officers.

6.2 The Duty Custody Inspector with responsibility for the custody suite where the child or young person is held shall perform this role for Merseyside Police. An Assistant
Director or Head of Service to Children’s Social Care (including out of hours) shall provide this function on behalf of the Local Authority.

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

6.4 Where it is not possible to reach an agreement following escalation, matters shall be referred subsequently to the responsible LSCB for review.

7.0 Monitoring and Review

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

7.2 The Merseyside Criminal Justice Board and at a district level the Local Authority Safeguarding Boards 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.

7.3 Merseyside 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 MCJB and LSCBs to determine the effectiveness of this protocol in safeguarding children and young people.

8.0 Authorisation

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

........................................................................................................
Signed on behalf of Merseyside Police

Date..................................................

........................................................................................................
Signed on behalf of Liverpool City Council

Date..................................................

........................................................................................................
Signed on behalf of Wirral Metropolitan Council

Date..................................................
Signed on behalf of Sefton Council
Date ..........................................

Signed on behalf of Knowsley Council
Date ..........................................

Signed on behalf of St Helens Council
Date .............................................
Appendices

Appendix A  Local Authority Process for Secure Accommodation
Appendix B  Revised 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 E  Guidance for local authorities wishing to place a child under the age of 13 in a Secure Children's Home (SCH)
Appendix A - LA Process for Secure Accommodation

Young Person is charged and Bail is withheld

Merseyside Police: Contact St Helens CYPs to request accommodation following the Youth Process after charge.

- Is the request made out of hours?
  - No: Merseyside Police: Make referral to contact team for urgent response.
  - Yes: Merseyside Police: Contact EDT for assistance

- Are the Police requesting LA Secure Accommodation?
  - No: Consider: Is there evidence that the young person presents a risk of serious harm to others? The test for secure accommodation is linked to the risk of harm presented by a young person to the public.
  - Yes: EDT: To request that Merseyside Police justify their decision-making rationale (to be recorded clearly on ICS). EDT staff should enter into discussions with Merseyside Police.

- EDT: Are you satisfied with the Police rationale for secure accommodation?
  - No: EDT: Advice to be sought from on-call Senior Manager and legal advisor
  - Yes: EDT: Liaise with on-call senior manager and seek legal advice as necessary

- Do EDT feel secure accommodation is required?
  - No: Can agreement on the need for secure accommodation be reached?
    - No: EDT: Notify Merseyside Police: Raise Merseyside Police: Raise (to be looked at in more detail). EDT and/or Merseyside Police: Raise Merseyside Police: Raise
    - Yes: Important: The Young Person remains in Police Custody.
  - Yes: EDT: Make arrangements for the young person to be transferred to appropriate non-secure accommodation

- Is there any secure accommodation available for the Young Person?
  - No: EDT: Notify Merseyside Police that secure accommodation is not available.
  - Yes: EDT: Make arrangements for the young person to be transferred to appropriate secure accommodation

- EDT: Make necessary arrangements to secure next court attendance

- EDT: Records updated. Notify YOS/Social Care of
Process Map – Procedure For Dealing With Youths After Charge
To Comply With Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LAPSO)

Young Person Charged – Bail withheld

Is the relevant Court open and accepting the Detainee

YES

Transfer to Court

NO

Custody Sergeant to complete Risk Assessment and consider

1. Is it impracticable to transfer the young person to local authority accommodation?

NOTE: Thick fog/ heavy snow/ no available beds within a reasonable distance may be good reasons, whereas a suspicion that he/she may abscond is not. The accommodation referred to is not secure accommodation, which is only relevant to below:

Or

2. If the Young person has attained the age of 12 years, and no secure accommodation is available. Would the public be at risk of serious harm from him/her?

NOTE: The Police and criminal Evidence Act 1984 does state 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.

Contact Local Social Services/ YOS via contact centre for urgent response

NO

Request made out of hours?

YES

Contact EDT

Social Services/ EDT Informed that Young person is in custody and that appropriate accommodation is required.

NOTE: under section 21 of the Children Act 1989, the Local authority must accept that child or young person when they receive a request from police. Whether the accommodation provided by the Local Authority is secure or non-secure is a matter for the Local Authority to decide and it is not something the custody officer is allowed to consider when deciding if the transfer is “impracticable”.

Are Social Services able to accept the young person?

NO

Social Services/ EDT to provide clear rational as to why accommodation is unavailable

YES

Transfer Young Person to Local Authority Accommodation

Complete a PCES (Certificate of youth detention)

Make a custody log entry detailing whom the custody/ detention officer spoke to and the outcome/ decision.

NB: PCES 5 is available on Niche via the detainee’s person record in the Occ Events/ Reports tab ‘right click’ and select ‘custody’ from drop down menu for link.

Young Person remains in Police custody for next available court.

Morning Duty Inspector is responsible for ensuring compliance
MERSEYSIDE POLICE

CERTIFICATE OF DETENTION
‘YOUTH’

Case Number:

From: The Custody Officer  
To: *The Clerk to the Justices

Station:  
*The Care Officer

Date:  

Detained Person :  
Date of Birth:

Charged With :  
Or
In need of care or control

Court:  
Date:

The Custody Officer hereby certifies that the above named person (who has apparently attained the age of 12 years) has been detained in police detention for the following reasons:

* ☐ His/Her name or address cannot be ascertained. (The Custody Officer has reasonable grounds for doubting whether a name or address furnished by him/her as his/her name and address is his/her real name and address).

* ☐ The Custody Officer has reasonable grounds for believing that the detention of the person arrested is necessary for;
  ☐ His/Her own protection
  ☐ To prevent him/her from causing physical injury to any other person
  ☐ To prevent him/her from causing loss of, or damage to property

* ☐ The Custody Officer has reasonable grounds for believing that the person arrested;
  ☐ Will fail to appear in court in answer to bail
  ☐ That his/her detention is necessary to prevent him/her from interfering with the administration of justice
  ☐ That his/her detention is necessary to prevent him/her from interfering with the investigation of offences or of a particular offence

* ☐ The Custody Officer has reasonable grounds for believing that he/she ought to be detained in his/her own interests.

AND

* ☐ The Custody Officer believes that it is impracticable to detain him/her in authority accommodation

OR

* ☐ The Custody Officer believes, in the case of a young person aged 12 or more, the public is at risk of serious harm if he/she is not detained in secure accommodation in which he/she could be placed.

Signed:

* INDICATE AS APPROPRIATE
## Appendix D

### Emergency Duty Teams – Contact Numbers

<table>
<thead>
<tr>
<th>Authority</th>
<th>Telephone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowsley</td>
<td>0151 443 2600</td>
</tr>
<tr>
<td>Liverpool</td>
<td>0151 233 3700</td>
</tr>
<tr>
<td>Sefton</td>
<td>0151 920 8234</td>
</tr>
<tr>
<td>St Helens</td>
<td>0345 0500 148</td>
</tr>
<tr>
<td>Wirral</td>
<td>0151 677 6557</td>
</tr>
</tbody>
</table>

### Custody Suites – Contact Numbers

<table>
<thead>
<tr>
<th>Location</th>
<th>Telephone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>St Anne Street</td>
<td>0151 777 4851</td>
</tr>
<tr>
<td>Wirral</td>
<td>0151 777 2751</td>
</tr>
<tr>
<td>Copy Lane</td>
<td>0151 777 3151</td>
</tr>
<tr>
<td>St Helens</td>
<td>0151 777 6851</td>
</tr>
<tr>
<td>Wavertree</td>
<td>0151 777 5451</td>
</tr>
</tbody>
</table>

In the event that the Custody Inspector is unavailable or the matter needs to be escalated further with a Police Senior Officer the Force Duty Officer can be contacted via the Force Incident Manager on 0151 777 9965.
Appendix E

Guidance for local authorities wishing to place a child under the age of 13 in a Secure Children’s Home (SCH)

Step 1: Contact the Department for Education (DfE). Details are shown below

Contact should be made before 5pm, and preferably as early in the day as possible. Early notification of a potential application is helpful, even if a final placement decision has not yet been made. If a local authority needs to make an emergency placement after 5pm they should telephone the Department’s ‘Out of Hours’ number (see below) and request to speak to the Children in Care Duty Officer.

Children in Care Portfolio: 0207 783 8086

DfE Public Enquiry Line: 0370-000-2288

Out of Hours’ Contact: 0207-340-7057

If calling after 5pm dial the number below and ask to speak to the Children in Care Duty Officer.

Step 2: Provide initial details to the DfE official over the telephone

The local authority will be asked to provide:

- the name and date of birth of the child concerned;
- a verbal summary of the reasons for the secure placement;
- confirmation of whether a secure children’s home bed has been identified and is available;
- confirmation of whether the child is currently with the local authority or missing from care (having absconded);
- details of when the local authority intends to go to court to seek a Secure Accommodation Order;
- details of what alternatives to a placement in a secure children’s home have been considered and why these were rejected.

Step 3: Submit written paperwork to DfE by email

The local authority will be asked to provide the following documents:

- a letter supporting the application. This must be at Assistant Director level or above;
- a full written history/chronology of the child;
- a contemporary care plan that covers the period of the secure placement.

NB: The care plan should include the aims and objectives of the secure placement and, where possible, the prospective exit strategy from the secure placement.

Step 4: Consideration of the application
The DfE will discuss the application with a member of Ofsted’s Secure Estate Inspection Delivery Team to obtain a professional view about the appropriateness of the application. It is possible that one of Ofsted’s inspectors will contact the local authority to discuss the case further or seek clarification on certain aspects of the proposed secure placement.

**Step 5:** The DfE will advise the local authority of the Secretary of State’s decision

Where an application is approved, a letter and certificate will be issued to the local authority on the same day via email. The signed, hard copy of the documents will be posted to the person who approved the application on behalf of the local authority.

Where applications are made out of hours, verbal approval will be given on behalf of the Secretary of State, if it is deemed the proposed secure placement meets the criteria under s.25 of the Children Act 1989. The relevant paperwork required from the local authority must be submitted to DfE on the next available working day. The approval letter and certificate will then be issued.

October 2014