



Home Office
Rt Hon Theresa May MP
Home Secretary



Department for Education
Rt Hon Nicky Morgan MP
Secretary of State for Education

Local Authorities in England

20 January 2015

Dear Lead Member for Children's Services,

TRANSFER OF CHILDREN FROM POLICE CUSTODY TO LOCAL AUTHORITY ACCOMMODATION UNDER SECTION 38(6) OF THE POLICE AND CRIMINAL EVIDENCE ACT 1984

We are writing to draw your attention to the serious problems there are in some areas across England in complying with the Police and Criminal Evidence Act 1984 (PACE) and the related requirement in section 21 of the Children Act 1989 with respect to the care of children who have been charged with an offence and have been denied bail. Section 38(6) of PACE requires that when a child or young person is detained after charge, the custody officer must seek to transfer them to local authority accommodation pending appearance at court. There are two exemptions to that requirement whereby the custody officer must certify either:

- (a) that it is **impracticable to transfer them**; or
- (b) in the case of a juvenile aged 12 or over, that **no secure accommodation is available and other local authority accommodation which is available would not be adequate to protect the public from serious harm from that juvenile.**

When a local authority receives a request from the police to accommodate a child or young person, they have an absolute duty, under the Children Act 1989, to do so. In particular, section 21(2)(b) makes clear that 'every local authority must receive and provide accommodation for children whom they are requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984.' Evidence suggests that the legal requirements are not being followed. There appear to be a number of factors that prevent the law from functioning as intended – such as a need for improved understanding as to the law concerning children and detention and insufficient provision of suitable accommodation (both non-secure and secure) by Local Authorities. The law is clear that there are very limited circumstances to justify the detention of children at police stations.

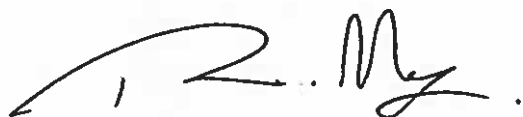
Police custody can be a distressing experience and this is particularly so for children and young people in trouble. It is for this reason that the legislation is designed to keep their stay in police custody to a minimum. So that the law is operating as Parliament intended the Government will therefore be working with chief constables, police and crime commissioners and local authorities to ensure that the best interests of children and young

people are served. What this means is ensuring compliance with the law across all police and local authority areas in England. We have begun to examine this issue comprehensively – from considering the supply and demand side issues to monitoring and non-compliance measures.


This Government takes the welfare of children very seriously. It is an explicit requirement under section 11 of the Children Act 2004 that local authorities, the police and specified others must ensure that in the discharge of their functions they have regard to the need to safeguard and promote the welfare of all persons under the age of 18. Co-operation between these parties to improve the well-being of the child is central to that Act and, at the highest level, the UN Convention on the Rights of the Child demands that the best interests of the child are a primary consideration in all actions concerning the child.

It is for this reason that we are taking action now and we urge you to work with neighbouring local authorities and the police in your area to play your part to ensure that the law is being adhered to. It is essential to comply with the law to prevent the needless detention of children in police custody. Action is required now to ensure that the police and local authorities have appropriate arrangements in place, prior to the commencement in October 2015 of an amendment to PACE in the current Criminal Justice and Courts Bill which will extend the section 38(6) requirement to 17 year olds detained in police custody after charge.

I am copying this letter to Carolyn Downs, Chief Executive of the Local Government Association.



The Rt Hon Theresa May MP



The Rt Hon Nicky Morgan MP