

The welfare duties of the police

Guidance for police station legal representatives

This briefing will assist legal representatives of children at the police station to set out the welfare & safeguarding guidance and legal frameworks the police should follow. Representatives should alert police officers of their duties towards children in

police detention in order to best represent those children. The briefing does not aim to explain the duties local authorities have towards the safeguarding or welfare of children.

The police must have regard to safeguarding the child

Safeguarding is a wider term than child protection and involves promoting a child or young person's health and development and ensuring that their overall welfare needs are met.

The NSPCC and Children Act 1989 statutory guidance "Working Together" define safeguarding and promoting the welfare of children as

- protecting children from abuse and maltreatment
- preventing impairment to children's mental or physical health or development

- ensuring children grow up with the provision of safe and effective care
- taking action to enable all children have the best outcomes.

Legal representatives should remind the police of their safeguarding and welfare duties when dealing with children, "which apply at all times, in any decisions the police make in relation to children including those who are alleged offenders." (Working Together, para 246)

The law and guidance

S11(2) Children Act 2004 places a specific duty on local authorities, NHS England, Youth Offending Teams and the police to discharge their obligations having regard to the need to safeguard and promote the welfare of children.

S 11(4) Children Act 2004 states 'Each person and body to whom this section applies must in discharging their duty under this section have regard to any guidance given to them for the purpose by the Secretary of State.'

The guidance is called Working Together 2023 which states at paragraph 246 that

"Children who are encountered as offenders, or alleged offenders, are entitled to the same safeguards and protection as any other child and due regard should be given to their safety and welfare at all times"

In Wales the guidance can be found in Welsh Assembly Government "Safeguarding Children: Working Together Under the Children Act 2004"

The College of Policing Approved Professional Practice: Police response to concern for a child states that the police have a duty to "*demonstrate kindness and reassurance.*"

The College of Policing Authorised Professional Practice – Children and Young People states that the Children Act 2004 requires local policing bodies and chief officers to cooperate with arrangements to improve the wellbeing of children in the authority's area relating to:

- physical and mental health and emotional well-being
- protection from harm and neglect
- education, training and recreation
- the contribution made by them to society
- social and economic well-being

The case of [ST v CC of Nottinghamshire Police \[2022\] EWHC 1280 \(QB\)](#), provided judicial comment on the approach of the police when investigating children in relation to alleged offending.

ST was 14 years old when arrested at 5:30am at his home address, 12 days after an alleged phone robbery. ST's father had offered to bring him to the police station at a reasonable hour which the police refused. ST's house was searched and he was arrested and detained in an adult cell for 6 hours before interview. He was not charged.

The court found that:

- there was no evidence that the police had considered ST's welfare. [15]
- ST's age was a 'central and obvious consideration' (94)
- that police must differentiate between children and adults when considering the necessity of arrest and detention as required not only by PACE 1984 but by wider obligations including the UN Convention on the Rights of the Child (Articles 3 & 37) and the Children Act 2004 (section 11).
- consideration of a child's best interests and welfare must be factored into police decisions on arrest [95], which "cannot be watered down to a mere matter of an officer's discretion as to whether it should be afforded any weight. Rather it must be considered, as an obviously material factor, when assessing whether the arrest of a child is necessary at any particular time." (116).
- The test of necessity for arrest and detention requires anxious scrutiny of the fact that a child is involved'
- With regards to detaining children 'The structure of the Act [PACE] provides the important safeguard of an independent assessment by the custody officer before a person can be deprived of their liberty. A perfunctory nod towards the cells will not suffice. [144] 'there were no reasonable grounds for believing that it was necessary to place a distressed boy in a cell. No custody officer, properly applying his common sense to the competing considerations before him, could reasonably have reached that decision' [149]

The Child Q Hackney [Local safeguarding practice review](#) [March 2022] concluded that:

- Taking a binary approach as to whether a crime has been committed or not runs the risk that important aspects of a child's life will be missed. Important aspects that may make the difference between that child being protected or not.
- Professionals should:
 - Ensure a safeguarding response is paramount where any suspicion the child may come to harm from potential or actual substance misuse arises
 - Not allow practice that is far too weighted towards a criminal justice response
 - Not always defer to the authority of the police
 - Challenge the police by seeking clarity about the actions they intend to take
 - Consider making written representations to the custody sergeant about suspected breaches of police safeguarding duties
- All practitioners need to be mindful of their duties to uphold the best interests of children.

The welfare interview

Where the police indicate that a welfare interview is to take place, representations should be made that it should take place as soon as the child is detained as the answers may affect their continued detention. It is important for the legal representative to attend this interview to ensure that the po-

lice do not ask any inappropriate questions. They can assist in ensuring that the need for continued detention is reviewed in light of any vulnerabilities as the child may not have disclosed these to the police.