

CONSULTATION RESPONSE

TO	Mental Health Act Code of Practice Review, Local Government and Care Partnership Directorate
FROM	The Independent Police Complaints Commission (IPCC)
REGARDING	Proposed changes to the Code of practice: Mental Health Act 1983

The IPCC and its remit

1. The IPCC was established by the Police Reform Act 2002 (PRA) and became operational in April 2004. Its primary statutory function is to secure and maintain public confidence in the police complaints system in England and Wales. It acts as an appeal body for some locally handled complaints and issues statutory guidance on complaints handling to police forces and local policing bodies. It undertakes independent investigations into the most serious cases; and has the power to manage or supervise police investigations. It has a statutory obligation to measure, monitor and where necessary, seek to improve the current complaints system. The IPCC is independent and makes its decisions independently of the police, government and interest groups.

2. The IPCC was created following both public and political concerns about the lack of an independent system to deal with complaints and conduct matters within the police service. Since that time its remit has been extended to include:
 - Police and Crime Commissioners and their deputies
 - the London Mayor's Office for Policing and Crime and his deputy
 - the Serious Organised Crime Agency (SOCA) (no longer operational)
 - the National Crime Agency (NCA)
 - Her Majesty's Revenue and Customs (HMRC)
 - staff who carry out border and immigration functions who now work within the UK Border Force and the Home Office certain non Home Office police forces (including the British Transport Police and the Ministry of Defence Police)

3. The IPCC is run by a Chair, two Deputy Chairs, eight operational Commissioners and four non-executive Commissioners. Together they make up the Commission. Commissioners (other than the four non-executive Commissioners and the Chair) have an operational role and all Commissioners have responsibility for governance of the organisation. Commissioners are appointed by the Home Secretary and by law they must never have served as a police officer. The Commission is supported by a Chief Executive Officer, a small management team and a staff of about 480¹. In 2013/14, the IPCC received an annual budget of £32.5m².

The IPCC's comments on the consultation

4. Mental health is an underlying theme in many of the cases that we investigate, especially where a death has occurred. Our response to this consultation is limited to our knowledge in this area and therefore focuses on mental health and policing and, generally, chapter 16 of the draft code.
5. In general, the IPCC welcomes the revised code and the fact that it attempts to provide clarity around places of safety and to take into account recommendations from the 2013 HMIC report³ *A Criminal Use of Police Cells*.
6. We understand that a review of sections 135 and 136 of the Mental Health Act is still currently being carried out by the Department of Health and it goes without saying that the revised code should reflect the outcomes of that review.
7. According to the IPCC's latest deaths following police contact statistics for 2013/14⁴, 11 people died in or following police custody, four of whom were identified as having mental health concerns. Of these four, two were detained under S.136. Furthermore, there were 68 apparent suicides following police custody. Two-thirds of these individuals (45) were reported to have mental health concerns and three of these had been detained under the Mental Health Act 1983 prior to their death. Other mental health concerns included previous suicidal thoughts, suicide attempts, personality disorders or depression.
8. Therefore the IPCC's position remains that police cells are not an appropriate or safe place in which to place people who are mentally ill and the high incidence of mental health concerns among those who die during or after custody remains a serious concern.

¹ This excludes the staff specifically recruited for and working solely on the Hillsborough investigation.

² This excludes the budget specifically provided for the Hillsborough investigation.

³ Her Majesty's Inspectorate of Constabulary, Care Quality Commission, et al. A criminal use of police cells? 2013. <http://www.hmic.gov.uk/media/a-criminal-use-of-police-cells-20130620.pdf>

⁴ http://www.ipcc.gov.uk/sites/default/files/Documents/research_stats/Deaths_Report_1314.pdf

9. Local policies. Paragraph 16.31a of the draft code states that '*local authorities, NHS commissioners, hospitals, police forces and ambulance services should have local partnership arrangements in place to deal with people experiencing mental health crises*'. This should read '*must have*' given the importance of robust arrangements being in place.

10. Places of safety. It is clear that paragraph 16.36 (to 16.42) of the draft code is trying to strengthen the argument about not using police cells as a place of safety. In practice this relies upon local interpretation of exceptional circumstances and the protocols/working relationships set up between health and the police. As highlighted in the HMIC report, we believe that this is unsatisfactory and that 'exceptional basis' should be clearly defined in law.

11. The recently piloted street triage mental health schemes be referenced and worked into the code as examples of good practice (if pilot results are positive).

12. The final bullet point at paragraph 16.42 in respect of children and young people is welcomed but the key point should be to ensure that there are alternatives to custody for children/young people rather than saying police custody should only be used 'unless there is absolutely no alternative...'

13. Involving police in restraint in health settings. The guidance currently refers to this briefly – but in the context of section 136 (at paragraphs 16.26 and 16.32). This is a contentious area – and it might be useful to explore this in more detail and in a separate sub-section. i.e. clearer guidance is needed about when police should be involved in restraint in health settings, and the need for local protocols to clarify expectations about how this will operate.

14. Similarly, the IPCC has been involved in cases where officers have been called into hospitals, including mental health units, where medical staff have been unable to manage patients and some of these have resulted in deaths. On occasions there have been insufficient properly trained medical staff to deal with incidents with mentally ill patients and they have then defaulted to police to support them. There needs to be greater thinking in this area with clearer statements in relation to roles and responsibilities and this should be reflected in the new code of practice.

15. Note that the IPCC has provided a consultation response⁵ to the Royal College of Nursing's draft guidance for health professionals on reducing the need for

⁵http://www.ipcc.gov.uk/sites/default/files/Documents/speeches/Response_to_RCN_consultation_on_minimisation_of_and_alternatives_to_restrictive_practices.pdf

restrictive practices in health and adult social care.

16. In 2010, the IPCC published a report⁶ following a study that examined deaths in or following custody over an extensive period in order to identify trends and the lessons that can be learnt for policy and practice to prevent future tragedies. The research used completed investigations to gather data on 333 deaths which occurred between 1998/99 and 2008/09.
17. This study looked at the use of restraint and force and included a recommendation that police control room staff should ask for details on the clinical condition of the detainee and of other patients on the premises when police officers are called to restrain detainees at medical facilities. This will enable the officers on the ground to make a judgment on whether to use restraint and on how to do it safely.
18. The IPCC is currently undertaking a wider research study examining police use of force, including physical restraint. As part of the data collection process, information on any mental health concerns of the individual who the police use force against will be recorded. The study is due to report in spring 2015.
19. Interaction between use of s136 and other police powers. Paragraph 16.27 states that section 136 '*should not be used as a substitute for, or affect the use of other police powers*'. It is agreed that section 136 should not be used as a substitute for other policing powers – but clarity is needed about the meaning of '*affect the use of other police powers*'. This does not seem to fit with paragraph 16.30, which states that section 136 should be used (if applicable) '*rather than the common law power of arrest for breach of the peace*'. Where s136 is appropriate – i.e. someone is recognised to be in mental health crisis – this *should* fundamentally impact on how police exercise their powers, including their power to use force.
20. Transportation. Clarification is needed around roles and responsibilities in the transportation of a person to/from/between places of safety. Furthermore, looking at chapter 17 in relation to police involvement in the transportation of patients, paragraph 17.13 references 'locally agreed arrangements'. It would be useful for the code to provide extra detail on these local arrangements to ensure that some forces do not transport significantly more patients than others because of different criteria being used at the local level.
21. The IPCC continues to have an interest in mental health and policing and we will continue to draw out learning from our cases in order to inform the improvement

⁶ <http://www.ipcc.gov.uk/page/deaths-custody-study>

of policing practice in this area, and to improve our own knowledge about mental health and its impact on policing.

IPCC
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