

CONSULTATION RESPONSE

TO	Her Majesty's Inspectorate of Prisons
FROM	Independent Police Complaints Commission (IPCC)
REGARDING	Consultation: Her Majesty's Inspector of Prisons and Her Majesty's Inspectorate of Constabulary Expectations for Police Custody-consultation on revised draft

The IPCC and its remit

1. The IPCC's primary statutory purpose is to secure and maintain public confidence in the police complaints system in England and Wales. We are independent, and make decisions independently of the police, government and interest groups. We investigate the most serious complaints and incidents involving the police across England and Wales, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.
2. The IPCC was established by the Police Reform Act 2002 and became operational in April 2004. Since that time our 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
 - certain specialist police forces (including the British Transport Police and the Ministry of Defence Police)
 - Her Majesty's Revenue and Customs (HMRC)
 - staff who carry out certain border and immigration functions who now work within the UK Border Force and the Home Office
 - the National Crime Agency (NCA)
 - Staff who are contracted to provide services to a Chief Officer
3. The majority of complaints against the police are dealt with by the relevant police force (or agency) without IPCC involvement. However, certain types of complaints and incidents must be referred by the police to the IPCC. These include where someone has died or been seriously injured following direct or indirect contact with police, as well as allegations of serious corruption, serious assault, and criminal offences or behaviour liable to lead to misconduct proceedings which are aggravated by discrimination. We then decide what level of involvement we should have in any investigation of the matter. We may choose to conduct our own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police.

4. In addition to our investigative and appellate function we also carry out other important functions. These include sharing learning with police forces and other oversight bodies such as the College of Policing (CoP) and Her Majesty's Inspectorate of Prisons (HMIP) to ensure that findings of complaints and investigations feed into better policing practice, and assist forces to improve the way they respond when people complain.

The scope of the consultation

5. The consultation document poses a number of questions about the scope and focus of the proposed Expectations for Police Custody document. Before answering these questions we would like to make some general comments about the proposed document. These comments are set out below, taking each section of the document in turn.

Section 1: Leadership, Accountability and Partnerships

6. The IPCC agrees with the principle that the leaders within a police force should set the tone and communicate a consistent message about safe and respectful delivery of custody. We agree this message should begin with Chief Officers and be reinforced throughout the police force.
7. It is not clear from the proposed document whether training for 'personnel' includes contracted staff. It is vital that a police force can demonstrate that contracted staff have the same level of training as other custody staff. This also extends to volunteers who are working with officers and staff in the custody environment who have powers designated by Chief Officers.
8. We have suggested to the College of Policing that revised Authorised Professional Practice for Detention and Custody (APP) should specify that custody staff, in particular supervising officers, must understand fully their responsibilities, and have the ability to react appropriately to adverse incidents in a police custody setting. We believe that this should be incorporated into the training that custody staff receive. Custody staff should also be able to demonstrate their understanding and contingency planning for adverse incidents.
9. In case six of the [Learning the Lessons bulletin 16](#) we highlighted an issue about inspectors not understanding their role and responsibilities in relation to the incidents which occur during an individual's time in custody. We recommended that the learning and development department of the force create an e-learning package to cover the responsibilities of inspectors when dealing with all potentially critical and serious incidents, such as those involving safer detention issues.
10. The IPCC believes a programme of ongoing training is vital for safe detention. We believe that police forces should be able to demonstrate that they review training needs when substantial changes are made to the law, guidance or other relevant material, for example changes to the PACE Codes. Training should also take account of learning from the police force itself, the IPCC and other policing organisations.
11. The IPCC believes that improved accountability through the collection and analysis of data would greatly improve a police force's understanding of its own organisation and

allow for the identification of good and bad practice, themes and trends. Sharing learning with other organisations could in turn be beneficial.

12. The IPCC is conscious that there may be a perception amongst custody staff that data collection adds unnecessary pressure to already heavy workloads. We would like those providing information to understand the reasons for recording and the management processes that information feeds into. This can encourage people to record information and prevent them from just ticking boxes, by recognising the reasons for the collection of information. We would expect training for custody staff about processes for recording information to have this focus.
13. We recommend the inclusion of a sub-section on accountability in respect of the Equalities Act 2010. We would like to see more detail in the final bullet point, which defines what “the needs of people” are.

Section 2: Pre-custody: First point of contact

14. The IPCC strongly supports HMIC and HMIP’s focus on diverting vulnerable people away from custody. We are supportive of the revised APP guidance which states that *“Drunk and incapable people are in need of medical assistance in hospital and officers should call an ambulance immediately”*. This should be reflected in the Expectations document.

Section 3: In the custody suite - Booking in, individual needs and legal rights

Privacy

15. The IPCC welcomes the focus on respect for the detainee. We believe it is necessary for detainees to be informed of their right to speak to custody staff in private and would like to see this reflected in this section of the Expectations document.

Rousing and checks

16. For a number of years the IPCC has had concerns that checks and rousing have not been carried out to the standard required. We have seen cases where custody staff have failed to conduct rousing checks properly, and cases where staff have failed to respond sufficiently promptly when the condition of detainees has deteriorated.
17. We would like this section of the Expectations document to refer to what is expected of custody staff in terms of checks and rousing - as set out in revised APP guidance on Detention and Custody (July 2015).

Removal of clothing

18. We think the removal of clothing is relevant to this section; the clothing of a detainee should only be removed where the risk assessment deems it necessary.
19. In case nine of the [Learning the Lessons bulletin 20](#), the IPCC recommended that officers should be provided with guidance to make sure a proportionate approach is taken regarding the decision to place each individual detainee in a smock. In this case there was an over-cautious approach following a death in custody, which meant that at

the time the individual in the case was being detained there were 13 detainees in custody of whom five had been placed in smocks.

Transgender people

20. We recommend that the document specifies that custody staff should be familiar with PACE Code C Annex L (2014), and should state that staff should respond positively, rather than adequately, to the needs of transgender people. The duty of public sector organisations under the Equalities Act 2010 is to *promote* good relations between persons of different groups.

Searches

21. We would like to see this section include a further bullet point about searches to reflect the following provision of PACE:

The search shall take place in an area where the detainee cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex.

22. We have dealt with complaints where, although the individual who was conducting the search was of the same sex, another individual of the opposite sex was present or was able to see the search taking place.
23. The IPCC recommended in two recent cases that PACE Code C considerations should be recorded on the custody record. This would include details about the testing of the rationale for strip searches and the requirement to attempt persuasion rather than force when a search is needed. It should be emphasised that searches should not be used routinely and never as a punishment.

Risk assessment and handovers

24. We welcome the inclusion of an item on handovers in the Expectations document. The APP on Detention and Custody states that handovers should take place in custody suites where CCTV equipment is available. We would also like to see this included in the Expectations document.

Complaints

25. The IPCC has been concerned for some time about differing practices in the initial handling of complaints or potential complaints by the police service. In September 2015 we published a report about access to the police complaints system. The report seeks to ensure all police forces provide consistent information to their local community about accessing the police complaints system. It also aims to ensure that the process for making a complaint is simple and straightforward, and does not deter complaints and complainants. The report sets out four key principles to achieve this aim. We strongly support the inclusion of a sub-section about complaints in the Expectations document. We are concerned that detainees are sometimes actively discouraged from making a complaint: for example, they are sometimes told they can only make a complaint once they have been released. Custody inspections should test the accuracy of information provided to detainees about the complaints process, and examine the number of complaints actually made. We would also suggest it make

reference to analysing data about complaints relating to custody issues so that good and bad practice might be identified.

Section 4 - In custody cells, safeguarding and healthcare

The physical environment

26. In her review of the IPCC investigation into the death of Sean Rigg, Dr Silvia Casale commented that:

“Effective monitoring of custody is an important safeguard for both the police and the public. There is an obligation to maintain CCTV systems in proper working order; failure to do so without reasonable cause may amount to a breach of management obligation.”

27. Steps should also be taken to ensure the quality of audio recordings. The IPCC would like to see these points reflected in the sub-section about the physical environment.

28. If a custody centre operates with multiple custody officers on duty at the same time, there should be evidence of clear lines of accountability to ensure the safety of each detainee.

Use of force

29. We strongly support the emphasis on documenting use of force prior to arrival and in custody. In January 2016 we will be publishing a study about use of force which will state that it is vital that use of force in the custody environment is properly documented so that it can be later collated and analysed to identify good and bad practice, themes and learning. . It is important that data is not just collated, but also regularly analysed and acted upon, and we suggest that this bullet point should say this specifically.

30. We think that staff should be able to demonstrate an understanding about how those with mental health issues, children and young people, people with learning disabilities, and those under the influence of drugs or alcohol will react to, and be affected by, the use of force.

Appropriate adults

31. Appropriate adults should be used from the start of the custody process. We think that the first bullet point in this sub-section should be extended to state that part of the guidance for appropriate adults should inform them of their right to inspect the custody record. We have seen a number of cases where officers have failed to communicate effectively with those performing this role. Such guidance will ensure that Appropriate Adults are able to discharge their responsibilities effectively, and that young people detained in custody are properly supported.

32. We have also dealt with a number of cases where children have been strip searched without an appropriate adult present, and we welcome the inclusion of a bullet point about this in the Expectations document. We would like to see it extended to check whether there are proper protocols setting out what action can be taken while waiting for an Appropriate Adult to arrive so that custody staff are clear about what they should and should not be doing.

Healthcare practitioners

33. In April 2016 NHS England will take over responsibility for commissioning health care in police custody. We are talking to them about commissioning clinical reviews in parallel with our own investigations in certain circumstances. We welcome the inclusion of expectations about healthcare practitioners, as we have dealt with some cases where we have had concerns about healthcare staff. For example, following an IPCC investigation we recommended that guidance should be given to custody staff about how to proceed when there is dissatisfaction with the performance of any healthcare professional, or where there are concerns about the competence of a healthcare professional who examines a detainee.
34. We are concerned that custody staff should have the confidence to challenge a healthcare professional where necessary and would like to see this reflected in their training.

Mental health and learning difficulties

35. We welcome the focus on mental health in the Expectations document and the expectation that custody staff will receive regular training on mental health and learning disability. For example, in case seven of [Learning the Lessons bulletin 20](#), we described how the mother of a detainee felt that officers had not taken into account the fact that her son had learning difficulties. We recommended that the police force consider providing custody staff with training about communicating with detainees on the autistic spectrum.

Section 5: Release and transfer from custody

36. Over a number of years the IPCC has dealt with cases where problems have occurred with the use of Person Escort Record (PER) forms.
37. In case six of [Learning the Lessons bulletin 16](#), a man suffering from alcohol withdrawal self-harmed whilst in police custody. Although the self-harm was noted on the PER form, little information was given to provide any context and the form failed to mention the man's alcohol and drug issues. Neither of the two custody sergeants who were responsible for the man during his time in custody had any input into or supervision over the completion of the PER form. The investigation found a lack of officer knowledge and training about completion of the PER form.
38. We would welcome the inclusion of a bullet point emphasising that custody staff should have up to date training on the use of PER forms.
39. In the case of Christopher Shapley the IPCC highlighted the adequacy of the PER form to the (then) Association of Chief Police Officers (ACPO) lead on custody. In this case, although the officer identified a risk of self-harm, he had additional information he felt would be relevant and included this on a separate sheet, which he attached to the PER form but the attachment was not received by the next agency. Some changes have since been made to the form.
40. We think the following bullet point should be extended to include a reference to attachments to the PER form so that additional information is effectively communicated to the next agency:

Person Escort Records are completed with all relevant detail, especially any issues relating to risk or self harm

Consultation questions

Question one: Do you agree that the scope of custody inspections should be extended to include the first point of contact (i.e. arrest/pre arrest)?

41. We strongly support the extension of custody inspections to include the first point of contact. It is our view that:

- People sectioned under section 136 of the Mental Health Act should be taken to a health based place of safety
- Those who are drunk and incapable should be taken to hospital
- Those with, or who have signs of, head injury should be assessed medically
- Acute behaviour disorder/disturbance should be dealt with as a medical emergency
- Those who have swallowed drugs should be taken to hospital
- Those who are under 18 should be diverted from police custody unless there are exceptional circumstances

Figures for deaths in England and Wales in 2014/15 showed that 17 people died in or following police custody. Our definition of 'custody' covers the point of arrest/detention onwards. Of these, eight were identified as having mental health concerns. Sixteen people were known to have a link to alcohol or drugs. Six pathologists stated that alcohol and drug toxicity or long term abuse was a contributing factor in cause of death. .

Question two: Do you think the new criteria have sufficient focus on diverting children and vulnerable adults from police custody?

42. See earlier comments.

Question three: Do you think there is anything else we should examine in inspections of police custody to strengthen the focus on vulnerability and risk?

43. See earlier comments.

Question four: Do you think that the new criteria have sufficient focus on implementation of the public sector equality duty responsibilities in the use of police custody- in particular the requirement to eliminate unlawful discrimination, harassment and victimisation?

44. The IPCC strongly supports HMIC/HMIP's focus on public sector equality duty responsibilities. In addition to the bullet points already included in this sub-section, we would like to see greater emphasis placed upon the interaction of the police with those with a disability who might be vulnerable to discrimination.

45. In September 2015, the IPCC published [revised discrimination guidelines](#). The guidelines are for the use of IPCC staff and the police in the investigation of complaints involving allegations of discrimination. To inform this work we commissioned Disability Rights UK to carry out research on our behalf about the experiences of members of the public with a range of disabilities in their contact with the police.

46. Not all of the accounts concerned custody issues but they have equal application to the custody environment.
47. All of the respondents felt that the police required better understanding and training about disability, the difficulties it can cause in what others would consider to be day-to-day activities, and the impact it can have on the behaviour of an individual and their ability to interact. The respondents said that greater resource was needed to support the police to act appropriately, for example in making reasonable adjustments. The same principle of better understanding and training can also be applied to the other protected characteristics, and we suggest that this should also be reflected in the Expectations document.

Question 5: Are there any further comments you would like to make on the proposed no criteria for inspection of police custody?

48. See earlier comments.

Independent Police Complaints Commission

1 December 2015