

Independent Custody Visiting Association

Prisoners being held in Police Custody



Purpose of Briefing

There are a number of reasons whereby police custody might be called upon to hold remanded or convicted detainees for a period of time. ICVA has produced a specific briefing for those detainees who have Virtual Remand Hearings, (VRH), and are subsequently remanded in police custody awaiting transfer, and you should refer to that briefing and checklist in those cases.

Should prison overcrowding become critical or alternative plans for Covid-19 need to be put enacted, then a contingency plan is in place, agreed by Her Majesty's Prison and Probation Service, (HMPPS), and the National Police Chiefs Council, (NPCC), to temporarily house sentenced prisoners in police custody suites. This is known as **Operation Safeguard** and is referred to in the guidelines below. The length of this contingency will not normally be more than one month from the point of activation, although during the Covid-19 pandemic this may be subject to change.

This briefing is to give schemes and ICVs an overview of the similarities and differences in the rights and entitlements of this group in the police estate, covering areas that might be different to that of PACE detainees, and to identify areas which may be asked by this group when ICVs are visiting.

Independent Custody Visitors

Independent Custody Visitors will be allowed access to Operation Safeguard prisoners should they request it. If ICVs attend that station, all detainees, regardless of detention type, should be asked whether they consent to a visit from an ICV, and whether they consent to the viewing of their custody record in the normal way. Usually those in court custody and in transport vehicles would have monitoring provided by members of the Lay Observers and for those in prisons monitoring is undertaken by the Independent Monitoring Board, (IMB).

ICVA will ensure that feedback from visits to the Operation Safeguard prisoners is passed to the relevant monitor, and this briefing and checklist has details of how to ensure this can happen below.

ICVA has included a table for an 'at a glance' look at how arrangements might differ at Appendix 1, and schemes might wish to use this in conjunction with the checklist when undertaking visits.

Are prisoners in Police Custody subject to PACE?

No. However PACE Code C states the following:

11. 1.12 *This Code does not apply to people in custody:*

1. (iv) *who are convicted or remanded prisoners held in police cells on behalf of the Prison Service under the Imprisonment (Temporary Provisions) Act 1980;*

However, the Code goes on to state:

The provisions on conditions of detention and treatment in sections 8 and 9 must be considered as the minimum standards of treatment for such detainees.

This means that all of those who are detained in police custody should get the same rights and entitlements as those detained under PACE Code C. This will include rights you are familiar with such as letting someone know where they are, access to medical care, access to legal advice etc. and entitlements such as reading materials, showers and exercise. You can get a copy of the rights and entitlements notice [here](#).

Rights and Entitlements - Similarities and Differences

Prisoners' Meals and Food

Similarity to PACE - Safeguard prisoners will be offered the same meals as PACE detainees. In accordance with PACE, 'at least two light meals and one main meal should be offered in any 24-hour period...drinks should be provided at mealtimes and upon reasonable request between meals' (PACE Code C 8.6).

Similarity to PACE - Every attempt will be made to accommodate prisoners' special dietary needs. Prisoner Escort Contractor staff will draw the attention of Police staff to a prisoner's special dietary needs at the earliest opportunity, including recording special dietary needs on the Prisoner Escort Record or PER, so that they may be best catered for.

Difference in police custody from the prison estate - Police custody does not typically have fresh fruit available for PACE detainees. Custody staff should take all reasonable steps to ensure that fresh fruit is available for prisoners under Operation Safeguard.

Something to note - On the day of transferring to a prison, the police should ensure that any prisoner for transfer has had sufficient food and drinks and are ready in anticipation of an onward journey of up to 4 hours.

Exercise

Similarity to PACE - In accordance with PACE, 'Brief outdoor daily exercise should be offered each day if practicable' (PACE Code C, 8.7). This will be at the discretion of the custody officer, and only where appropriate facilities are available and have been risk assessed.

Difference in police custody from the prison estate – Police custody does not always have reading materials or distraction activities, these should be provided for prisoners subject to risk.

Difference in police custody from the prison estate – In prisons, prisoners have free association, where they are able to mix and socialise with their peers, use telephones etc. Free association will not normally be allowed in police custody.

Difference in police custody from the prison estate – In prisons, depending on their regime, prisoners are allowed access to radios, televisions and personal entertainment systems. In police custody, prisoners who have such items in their personal property will not be permitted to use them in the cells.

Smoking

Similarity to PACE detention – No one will be able to smoke tobacco or tobacco products in police custody or in exercise areas. Closed prisons in England and Wales have been smoke-free since 2018 and therefore similar in terms of arrangements.

Difference in police custody from the prison estate – Prisoners are allowed to vape in areas of most prisons, sometimes including their cells. This will not be allowed in police custody, in cells or on the premises. There are varying arrangements for nicotine replacements in police custody, which may have a greater impact on those who would be able to vape if held in the prison estate.

Clothing

Similarity to PACE - Prisoners may wear their own clothes whether or not they have been convicted. As a general rule, visitors/family are not permitted to bring in an exchange of clothing for prisoners, however in exceptional circumstances the Custody Sergeant may allow it. Those held under Operation Safeguard should be able to have access to clean clothing from their property, or well-fitting replacements offered from custody staff where required.

Visits

Similarity to PACE - Visits are not generally allowed unless there are reasons (e.g. welfare/mental well-being, child in custody etc.) for the visit to take place. If a Custody Sergeant decides that circumstances make a visit permissible, visits should take place in accordance with local custody protocols and risk assessments.

Difference in police custody from the prison estate – prisoners are generally allowed visits, although many are currently suspended due to the Covid-19 pandemic.

Mobile Phones

Similarity to PACE – Prisoners will not be allowed to keep personal mobile phones in their possession. These will be stored with the prisoner’s property and handed to Prisoner Escort Contractor staff at the time a transfer is in place.

Difference in police custody from the prison estate – due to Covid-19, some prisons currently allow access to prison mobile phones in order to increase contact with family members. At the time of writing, police custody does not offer the same provision. Police custody staff should try and enable prisoners to maintain contact with their families.

Clinical Treatment and Attention

Similarity to PACE – prisoners held under Operation Safeguard in police custody have the same rights of access to care as PACE detainees, that is that they can request to see a medical professional at any point, and that healthcare should be provided as soon as is practicable. Prisoners should be given access to ongoing treatment regimes such as opiate substitution.

Medical Emergencies

Similarity to PACE - If emergency medical treatment is required, ‘the nearest available health care professional or an ambulance must be called immediately’ (PACE Code C, 9.5A). Alternatively, the Custody Sergeant may arrange for the police to take the prisoner to hospital as a matter of urgency.

Similarity to PACE - Prisoners transferred to hospital (by ambulance or police escort) should be escorted by sufficient officers justified by a risk assessment, who will be supplied according to local protocol. Awaiting the escort must not delay transfer to hospital.

Vulnerable Prisoners

Operation Safeguard cells and staffing levels will be expected to accommodate prisoners who would ordinarily be accepted under PACE. Whilst this does include prisoners within the categories below, as far as practicable Operation Safeguard will plan to minimise the occasions when such prisoners are held:

- female prisoners.
- child prisoners (those under 18 years of age).
- prisoners who are undergoing a Crown Court trial should be returned to prison each night.
- any prisoner needing admittance to a prison health care centre.
- prisoners at risk of self-harm being moved with an open ACCT (Assessment, Care in Custody & Teamwork) .
- prisoners remanded for serious offences and who are potentially category A.

- prisoners who have a history of either escape attempts or disruptive behaviour within the last 2 years.
- Prisoners whose presence at a given location could attract a serious adverse reaction from the local community or hinder the delivery of policing locally.

Something to note – Prisoners who are being held in police custody might find this experience unsettling, or difficult for any number of reasons. ICVs should report any statements made by a prisoner of intent to self-harm, or any concerns as to the state of mind of a prisoner to the custody staff as a matter of priority.

Prisoner Complaints

Prisoner complaints should be reported to an officer of Inspector rank or above and dealt with in line with [PACE Code C 9.2](#).

Reporting for ICVs

ICVA has produced a checklist for ICVs visiting Operation Safeguard prisoners, so please do use this to help guide your visits and interactions, along with the 'at a glance' table below. Please consider the additional entitlements to monitor from the checklist and let your scheme manager know in the normal way if there are any problems.

Please also make a note on your reports of the general atmosphere in custody, does it feel safe and well managed, are staff coping well with the additional demands etc. Your scheme manager can then feed this back to the force and ICVA.

Reporting for Scheme Managers

If Operation Safeguard is put into action during the Covid-19 pandemic, ICVA will use the Midweek Monitor to collate specific feedback for this cohort in police custody.

Please could you ensure that if suites in your area are activated in terms of holding that you complete the monitor and give a detailed overview of ICV feedback from this time.

This will allow ICVA to pass on information to the other monitoring bodies effectively.

Thank you to both ICVs and scheme managers for your continued work to keep effective monitoring in place, we really appreciate all that you are doing.

APPENDIX A
Similarities and Differences – At a Glance

Type of Right or Entitlement	PACE Detainees	Operation Safeguard prisoners	Does this differ from what would happen in prisons?
ICV Visits	Yes	Yes	Yes – prisons would have the Independent Monitoring Board, (IMB). An agreement is in place to feed back to the IMB of any arising issues.
2 light and 1 main meal per day	Yes	Yes	No - Although the number of meals provided are the same, meals in police custody may be viewed as poor in quantity and quality.
Special Dietary Needs	Yes	Yes	No – both police custody and prisons will take account of any dietary needs.
Access to Fresh Fruit	No	Yes	People in prison are able to have fresh fruit, this should be arranged for the time they are held in police custody under Operation Safeguard.
Meal prior to journey	Yes	Yes	No – police custody will offer meals prior to transport.
Brief Outdoor Exercise	Yes	Yes	Yes – no free association will allowed in police custody, and time out of cell could be less.
Radios supplied/allowed	No	No	Yes – prisoners would usually be able to have access to a radio, or potentially a television depending on their status.
Reading/distraction materials	Sometimes	Yes	Yes – prisoners would have access to a library and may have distraction activities in cell. Police custody should provide these during Operation Safeguard.
Smoking allowed	No	No – PACE applies	All closed prisons in England and Wales are now smoke free but have access to vapes and nicotine replacements. No vaping in police custody. Variable access to nicotine replacements.

Able to wear own clothes	Yes, where risk assessed and evidence allows	Yes	Those on remand are able to retain own clothes, but once sentenced are given prison clothing.
Visits allowed only when exceptional	Yes	Yes	Visits are currently suspended in many prisons but will normally be allowed twice per week.
Visitors are searched	Yes	Yes	No – the same rules would apply in terms of Operation Safeguard prisoners.
Mobile Phones	No	Possibly	Possibly - During the Covid-19 pandemic, some detainees held in the prison estate are given access to mobile phones in order to ensure that they are able to keep in contact with their families. Police custody should allow prisoners to maintain family contact.
Medical Care offered	Yes	Yes	No – All of those held in police custody have the right to ask for medical care. Prisoners should be able to have access to continuing treatment regimes such as opiate substitution.
Emergency medical care	Yes	Yes	No – All of those held in police custody have the right to ask for medical care.
Ability to make complaints	Yes	Yes – as per PACE	Yes – the mechanism for complaints is slightly different although there is a mechanism in place so that complaints can be made.