

<b>Meeting</b>	<b>SPA Policing Performance Committee</b>
<b>Date</b>	<b>9 December 2021</b>
<b>Location</b>	<b>Video Conference</b>
<b>Title of Paper</b>	<b>Update of Custody Recommendations Progress</b>
<b>Presented By</b>	<b>Chief Superintendent Gordon McCreddie, Criminal Justice Service Division</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>Yes Appendix A – Outstanding HMICS Recommendations Appendix B – Outstanding ICVS Key issues Appendix C – Outstanding CPT Recommendations</b>

**PURPOSE**

The purpose of this paper is to provide an updated progress report on all:

- Outstanding Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS) recommendations from 2018/2019 inspections;
- Key issues highlighted within the Independent Custody Visiting Scotland (ICVS) Annual Report 2019/20 and
- Outstanding recommendations from CPT 2012 and 2018 visits to Scotland.

Members are invited to discuss the contents of this paper.

## **1. BACKGROUND**

- 1.1 It is recognised that “Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS) provides independent scrutiny of both Police Scotland and the Scottish Police Authority (SPA). Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs”.
- 1.2 The SPA has a legislative responsibility to oversee the provision of independent custody visiting. Independent Custody Visiting Scotland (ICVS) conduct regular visits to centres and highlight any urgent matters for escalation at the time and other less immediate concerns within their annual report.
- 1.3 The CPT was set up under the Council of Europe’s European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which came into force in 1989 and although not an investigative body, it provides a non-judicial preventive mechanism to protect persons deprived of their liberty against torture and other forms of ill-treatment.
- 1.4 Following any external scrutiny relating to Custody, Criminal Justice Services Division (CJSD) review the key findings of the reports and determine a strategy to progress recommendations toward closure.
- 1.5 Departmental Governance and oversight is provided by the CJSD Senior Leadership Team (SLT) with the Continuous Improvement Unit (CIU) having responsibility for overseeing and managing the recommendations towards completion, in conjunction with the Audit Management Team.
- 1.6 Audit Management monitors all recommendations from external scrutiny activity via an Audit and Inspection Tracker and reports on the implementation of actions, in accordance with agreed timescales. Progress with the Tracker is reported monthly to Management Boards; quarterly at Police Scotland Audit and Risk Board; SPA Audit, Risk and Assurance and Policing Performance Committee meetings. When new recommendations are received, they are added for tracking and work commences with the business area to develop an action plan. Timescales are set and recommendations are continually monitored through the Police Scotland governance structure until completion.

## **2. FURTHER DETAIL ON THE REPORT TOPIC**

- 2.1 Over the past two years, despite the challenges presented by COVID 19 and the ongoing organisational change and remodelling of the custody target operating model, a great deal of progress has been made by Police Scotland in respect of HMICS, ICVS and CPT recommendations.
- 2.2 On 1<sup>st</sup> April 2020 there were 18 outstanding HMICS recommendations and that number has since been reduced to 6. This will hopefully provide members with the assurance that the care and welfare of people in our care and custody, and our staff remains a priority for CJSD as it strives for continual improvement.
- 2.3 The 6 outstanding recommendations are listed in Appendix A with a short explanation of progress toward closure and barriers to achieving this.
- 2.4 Within the ICVS Annual Report 2019/20 9 issues were raised by ICVs during custody centre visits throughout the reporting period.
- 2.5 As reported to the Committee in March, these are broadly similar to HMICS observations, with 8 still being identified as ongoing detainee transfers; inconsistencies in National stock/repairs and maintenance of the Custody Estate; Care and welfare issues relating to shower/exercise facilities. A brief update is provided in Appendix B, however ICVS have been provided with a more comprehensive report outlining progression.
- 2.6 The CPT report from 2012 still has 1 outstanding recommendation and the 2018 report has 6, with 3 of those under the remit of the National Police Care Network. Appendix C offers an update of those in progress.

## **3. FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications associated with this report.

## **4. PERSONNEL IMPLICATIONS**

- 4.1 There are no personnel implications associated with this report.

**5. LEGAL IMPLICATIONS**

5.1 There are no legal implications associated with this report.

**6. REPUTATIONAL IMPLICATIONS**

6.1 There are no reputational implications associated directly with this report, however if the recommendations and observations were not appropriately addressed this could have a negative impact on the reputation of CJSD and Police Scotland.

**7. SOCIAL IMPLICATIONS**

7.1 There are no social implications associated with this report.

**8. COMMUNITY IMPACT**

8.1 There are no community impact implications associated with this report.

**9. EQUALITIES IMPLICATIONS**

9.1 There are no equalities implications associated with this report.

**10. ENVIRONMENT IMPLICATIONS**

10.1 There are no environmental implications associated with this report.

**RECOMMENDATIONS**

Members are invited to discuss the content of this report.

## Outstanding Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) Recommendations

### Inspection of Custody Centres across Scotland 2018

**R1 2018** – *Police Scotland should develop its custody estate strategy as a matter of urgency in order to address variations in provisions across the country and better meet demand.*

**Update** – The Custody Estate Investment Plan is now finalised and CJSD is in the process of completely refreshing the current Custody Estate Strategy and updating this with a 5 year strategy. This will include timeline and plans and is anticipated to be complete by early 2022.

Aside to the development of the strategy there is now significant investment in enhancing the custody provision across Scotland with some of the larger works planned for 2022 including sites at Falkirk, Greenock, Elgin, Inverness and St Leonards. There have already been significant investments and improvements made to our sites at Govan, London Road and Cathcart this year.

This recommendation is also related to the ICVS issue regarding transfers and the concern around time spent in vehicles and longer distances travelled. Transfer durations are improving and, although the percentage of throughput that are transferred remains static, this can be mitigated by pandemic measures.

**R5 2018** – *Police Scotland should provide further guidance and training to staff on carrying out effective risk assessments and ensuring care plans manage the risks posed. Staff should also be reminded to record the rationale for risk assessments and care plans.*

**Update** – This is linked to R3 Glasgow. Combined closure report submitted to HMICS Oct '20, however HMICS were keen to keep this open meantime due to the theme of risk assessments across a number of Police Scotland business areas. The CJSD Quality Assurance Framework is complete. Separately, an Improvement Plan was created following findings and recommendations from the Constant Observation Short Life Working Group in relation to risk assessments and observation levels. Work is ongoing to address actions within this Improvement Plan.

## **Inspection of the Strategic Arrangements for the Delivery of Police Custody 2019**

**R3 Strategic** – *Police Scotland should ensure that Criminal Justice Services Division receives the necessary analytical support from the Analysis and Performance Unit.*

**Update** – The Audit Management Team advise that this links to the wider Analysis and Performance Unit redesign (HMICS 2018-19 Thematic Inspection into the development of the Annual Police Plan). CJSD is unlikely to obtain a BAU analyst and discussions are ongoing with regard to other possible solutions.

In the absence of a dedicated analyst, CJSD investigated other methods which could offer analytical support without the necessity of a dedicated human resource. The current management information system used by CJSD known as ScOMIS (Scottish Operational and Management Information System) will soon become obsolete and is also limited in capacity as to the finer details of what performance data which can be provided. Therefore an opportunity existed to develop a new analytical tool, similar to the Power BI Quality Assurance Dashboard recently created, but which would provide the ability to capture all aspects of CJSD analytical data as opposed to purely custody information.

A performance short life working group (SLWG) was formed to investigate the collating of performance and management data for all of CJSD. HMICS have indicated that they may consider a closure report for this recommendation if CJSD can demonstrate that they have been able to address this area and meet HMICS requirements without a dedicated analyst and work is ongoing to provide evidence to this effect. Analytical assistance to CJSD will still be required but perhaps not to the degree of a dedicated analyst for CJSD.

## **Inspection of Custody Centres in Greater Glasgow Division 2019**

**R1 Glasgow** – *Police Scotland should reconsider how it can better manage custody queue levels and provide radios to large custody centres to improve communication inside the centre and with local policing.*

**Update** – The review of the Custody Co-ordinator Pilot is complete and is currently under assessment. This role may also be considered in the Force Custody Inspector/ Custody Review Inspector and Quality Assurance Inspector review as part of a custody overview type provision combined with other roles. The utilisation of a Custody Co-ordinator during COP26 is included in the review of the aforementioned pilot. The division are now actively pursuing the implementation of the custody co-ordinator which serves the central belt of Scotland and this is likely to be implemented. It is not considered appropriate out with the central belt as there is less choice between custody suites due to the rural and remote nature of some sites.

In addition, a Chief Inspector in the division is progressing a national provision of radios for all staff in custody suites across Scotland. This is expected to be complete this financial year.

**R3 Glasgow** – *Police Scotland should analyse risk assessment and care planning variances to check whether they are justified and to ensure a consistent approach across Scotland.*

**Update** – This is linked to R5 2018 as above. Ongoing work

**R5 Glasgow** – *Police Scotland should improve the adequacy and quality of information being recorded in custody by providing guidance and training to staff and by using quality assurance and audit processes.*

**Update** – Ongoing work to develop robust quality assurance and audit processes following completion of the Quality Assurance Framework (see update to R5 2018 and R3 Glasgow).

This recommendation is related to observations made by ICVS regarding information not always being accurately recorded correctly within the National Custody System.

## Outstanding Independent Custody Visiting Scotland (ICVS) Key Issues

### Detainee Records

*We are noticing that not all details are being recorded accurately and in the correct areas within the national custody system, and manual cell sheets are in use for recording information which is not always being duplicated onto the system.*

**Update** – Substantial work has been undertaken in relation to NCS recording practices. A variety of communication methods have been used to cascade information to staff and guide them towards the correct area for inputting information.

There is ongoing work to examine the necessity of retaining the hard copy Prisoner Custody Record. The introduction of hand held devices in all custody suites will resolve the issue of information not being input onto the system, as staff will be able to input at source as they attend each cell. There will be a continuing roll-out of these devices, albeit this is a slow process and dependent upon Wi-Fi installation.

### Transferring of Detainees

*Towards the end of the reporting period, the national contract for transferring detainees has been highlighted as a concern with regards to time spent in vehicles and longer distances travelled. This is down to a number of factors relating to GEOAme staffing numbers and the depots in use at the time of the transfer request. This has become more of an issue with the new measures in place under Covid and limited resources.*

**Update** – In terms of the amount of transfers, 2019/20 saw 4.01% of custody throughput being subject to a transfer. The following year, 2020/21 saw an identical percentage of throughput being subject of a transfer, however it should be highlighted that during 2020/21 there was rationalisation of the custody estate due to the Covid-19 Pandemic. This required an increase in transfers to and from designated Covid centres and also an increase of transfers to facilitate Virtual Court appearances.

Transfer durations are improving and, although the percentage of throughput that are transferred remains static, this can be mitigated by



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pandemic measures. Work is ongoing to improve accuracy of data input with regard to transfer times.

### **National stock**

*Lack of consistency and the disparity of stock and supplies such as blankets and anti-harm suits across custody suites was originally raised in 2015-16 and, despite a new supply contract, remains an issue.*

**Update** – A full stock audit and realignment operation was conducted by the contractor in April 2021 which identified a shortfall in some stock items. Additional clothing and blankets were procured and redistribution of laundry took place in a manner that was consistent with usage. In order to ensure centres remain sufficiently stocked and to monitor the situation moving forward, regular meetings have been set up with the contractor to allow any issues to be raised timeously. This will be monitored moving forward.

### **National Repairs and Maintenance**

*The contract to deal with repairs to the fabric of custody estate continues to be reported, as well as the length of time it takes for work to be commissioned and completed.*

**Update** – There is a clear process in place with regard to reporting any faults or repairs which relate to health and safety issues, particularly in cells; faults with CCTV; and Fire Alarm defects. A priority system is adhered to by the contractor, depending upon the exact nature of the problem, and all relevant supervisors are made aware so that mitigation measures can be considered if necessary. Depending upon the scale of the work required and the outstanding priority list in existence at any given time, some delay may be experienced in resolving issues. This will remain under scrutiny.

### **Shower/Wash**

*The restricted access to showers/washing facilities and exercise are fundamental human rights areas which remain unaddressed. These can be somewhat attributed to staffing constraints and physical conditions, however the custody centres with washing facilities are not using them consistently and detainees are simply not being offered a basic wash. Not all cells have in cell washing facilities.*

**Update** - The current policy regarding washing, advises that “where an arrested person is to be detained in custody for more than a full day, they should be offered facilities to wash and / or shave at least once per day. Any reasonable requests to wash and / or shave more often than this are

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to be met where possible. Facilities are also to be made available for a person to wash and shave, if they wish, prior to appearing in court.” Custody staff have been reminded to ensure that the National Custody System is updated whenever a person is offered washing/showering facilities and this will be monitored and audited moving forward.

### **Lack of Exercise**

*An on-going issue, especially for those detained over the weekend and during public holidays. Not all custody centres have these facilities however, in the small number that do, they are not being used.*

**Update** – There is no legislative requirement for Police Scotland to provide exercise facilities and the custody estate layout and staffing profile preclude these being offered as a standard practice. That being said, where layout and staffing allow, and circumstances dictate that fresh air and exercise would be of benefit to a person in police custody, this would be determined on a case by case basis.

A scoping exercise is in the process of being conducted with other forces to ascertain how exercise opportunities are managed/ risk assessed etc. in other parts of the United Kingdom.

### **Police Scotland Custody Estate**

*The quality of the fabric of the custody estate, inherited from the legacy police forces, still varies throughout. Perceptions of staffing levels and the pressures impacting on officers and staff dealing with individuals being processed through custody has an impact on the effective and efficient management of detainees.*

**Update** – The CJSD Estates and Services Governance Group oversees all of the three categories for identifying and agreeing investment - Health and Safety, Fire Risk, and Innovation and drives the delivery of the investment.

It was recognised that queues were forming at some custody centres, particularly in the West of Scotland who were receiving an inequitable share of throughput, with additional pressures being placed upon supervisors and staff. An HMICS recommendation relating to queue levels also supported the creation of a Custody Co-ordinator role being introduced. This has been trialled as a pilot for the West Command (Greater Glasgow and outlying districts) area with the potential for possible future National roll out. Interim findings were positive and a full review is now complete, with outcomes

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awaited. This will inform potential future progression of a national Custody Co-ordinator facility.

### **Remote Supervision**

*There have been a number of issues raised by Police Scotland staff regarding the remote supervision model and concerns that it could lead to delays in processing detainees. ICVs and staff have been advised that a further risk assessment would be carried out and in some centres additional sergeants would operate to provide oversight.*

**Update** - A Dedicated Interactive Remote Supervision Pilot has been proposed for remote/ rural custody centres. This will implement technology to allow face-to-face interaction between the person in custody, arresting officers, and Custody Sergeant via online video. This 'proof of concept' test will demonstrate commitment to support Local Policing activations of ancillary sites for suitable low-risk, short-term arrests, where court disposals are not anticipated.

**Outstanding European Convention for the Prevention of Torture  
and Inhuman or Degrading Treatment or Punishment (CPT)  
Recommendations**

- 2012 – 1 still in progress
- 2018 – 3 still in progress and 3 under the remit of the National Police Care Network.

**2012**

**Recommendation 4-12:**

*The CPT recommends that all persons detained for longer than 24 hours be offered the possibility of access to outdoor exercise. The CPT also invites the Scottish authorities to enable persons in custody for longer than 24 hours to use the shower facilities.*

**Current Status:**

Not all custody centres have exercise and/ or shower facilities and access to exercise and showering is different in comparison to that provided when within Scottish Prison Service Establishments.

There is no legislative requirement for Police Scotland to provide exercise facilities and the custody estate layout and staffing profile preclude these being offered as a standard practice. That being said, where layout and staffing allow, and circumstances dictate that fresh air and exercise would be of benefit to a person in police custody, this would be determined on a case by case basis.

A scoping exercise is in the process of being conducted with other forces to ascertain how exercise opportunities are managed in different areas and results will be presented to the Criminal Justice Service Division Senior Leadership Team.

Custody staff have been reminded to ensure that the National Custody System is updated whenever a person is offered washing/showering facilities.

Monitoring and audit of compliance with regard to affording washing opportunities and accurate NCS recording will be conducted moving forward.

**Recommendation 3-18:**

*The CPT recommends that detained persons should be informed when the third party notification has been effected by custody staff; this feedback should be traceable in the police custody records.*

**Current Status:**

A priority change request has been submitted to the National Custody System (NCS) Governance and User Forum regarding an amendment to NCS to ensure that the feedback loop to the arrested person is on a mandatory recording field. This change will prevent the NCS user from exiting the screen without inputting the time/date that the notification has been made to solicitor/RNP and feedback provided to the person. This will provide Police Scotland with actual data to support the level of compliance.

**Recommendation 4-18:**

*The CPT recommends that the custody staff be alert to whether a detained person wants to consult with a lawyer directly and ensure that access to a lawyer must be guaranteed as from the very outset of a detained person's deprivation of liberty.*

**Current Status:**

The access requests on NCS only have the option for 'pending, granted or denied' with no rationale recorded under this section.

In order to enhance our ability to gather more accurate data in this respect, a change request for NCS to amend these categories to just 'granted or delayed' (with a mandatory drop down option for the reason) has been submitted to the NCS Governance and User Forum as part of the priority change request described in the previous recommendation.

**Recommendation 7-18:**

*The CPT recommends that the Scottish authorities ensure that Police Scotland and the NHS take measures to standardise the approach to methadone maintenance and detoxification treatment in police custody. The CPT would appreciate information as to whether the type of DHC used in police custody is short-acting DHC, or long-acting DHC.*

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**Current Status: NHS Ownership** (Update provided by the National Police Care Network (NPCN) :

13 out of 14 NHS Boards have a standardised approach to methadone maintenance in police custody. The one NHS Board which doesn't is currently looking at ways on how this could be incorporated. Methods differ with regard to how DHC is used, with some NHS Boards using long acting (DHC 60MR) and others using short acting DHC according to local Standard Operating Procedures.

### **Recommendation 8-18:**

*The CPT recommends that the Scottish authorities ensure that custody staff are reminded, through regular training, that all injuries should be immediately and properly documented and that such detained persons should be examined by NHS health-care staff; recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that should be kept in the custody records of the detained person. Also, a special trauma register should be kept.*

**Current Status: NHS Part Ownership** (Relevant text regarding special form and trauma register was provided by the National Police Care Network).

A person in custody should be referred to an HCP if there is any reason to believe they are suffering from an injury (depending on severity).

All injuries noted or self-declared are recorded on the National Custody System (NCS) and where appropriate, brought to the attention of the Force Custody Inspector. Custody staff will also refer a person to an HCP if there are concerns relating to their demeanour.

If an injury is sustained in custody through an allegation of ill-treatment, processes are in place to ensure that a healthcare professional is involved and robust reporting mechanisms are in place for the prisoner to make a complaint. Dependent upon the circumstances, this may involve an Episode Report being recorded on NCS, and it may prompt the commencement of a Procedural Review or notification to (PSD) for evaluation. PIRC are also required to be informed of any serious injury in custody under the Police and Fire Reform Act 2012 and the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013.

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Custody records are the subject of ongoing review, through governance processes. The Force Custody Inspector has oversight at any one time, there is accessibility of on-call senior management, and discussions of noteworthy incidents/custodies take place during daily senior management meetings. A programme of regular audits are also conducted to scrutinise custody record content.

### **Recommendation 9-18:**

*The CPT recommends that procedures should be put in place to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the detained person concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecuting authorities, regardless of the wishes of the person concerned. The person should be told of the reporting obligation by the doctor and reminded that he/she can also initiate a complaint, if they so wished. The results of the examination should also be made available to the detained person concerned and his or her lawyer. If necessary, the Scottish Standard Operating Procedure should be amended to reflect these principles.*

**Current Status: NHS Ownership** (Text provided by the National Police Care Network)

Whilst there is not currently a special form or trauma register used to document injuries in these circumstances, the National Police Care Network would be happy to facilitate scope as to whether such a form would be feasible and more beneficial than the current process, along with an amendment of the current SOP to include a protocol informing doctors of their responsibilities of who to distribute their reports (of injuries) to (including the person/their lawyer).

For further context, the National Police Care Network has a role to improve capability and capacity in the forensic medical workforce in Scotland. Through its Education and Workforce facet working group, the Network will look to refresh existing training materials. The Network will ensure that the underpinning international and national legal context, including the Mandela Rules and Istanbul Protocol is included in the revised training materials. The Networks will also work with healthcare professionals working in police custody to ensure that they are aware of processes for the examination of victims of torture and ill treatment.

**Recommendation 12-18:**

*The Committee recommends that the Scottish authorities take steps to decrease the high numbers of persons held in police custody facilities for longer than 24 hours (i.e. between Friday and Monday mornings), through, inter alia, the opening of some Saturday courts.*

*Further, any newly planned police custody facilities should provide for access to sufficient natural light, ventilation and outdoor exercise facilities.*

**Current Status:**

Police Scotland continue to act in accordance with the statutory duty to present accused persons at court on the next 'lawful' day where it is appropriate to do so. Until there is a system of custody court hearings on a 7-day basis, there will always be potential for persons to be held over 24 hours.

Police Scotland are supportive of 6/7 day custody courts and are working with partners to achieve this. SCTS are now taking the lead on a Virtual Custody Working Group with the aim of developing a national custody model which could operate over 6/7 days.

The rollout of the model for Virtual Custody Courts is considered the most flexible and agile way to deliver a 6/7 day custody court system. Work on this pivotal work-stream continues and the outcomes will dictate future progress in this regard, albeit it is recognised that the introduction of a 6/7 day model would have significant organisational change implications for statutory partners and wider justice stakeholders, including defence agents.

With regard to the final point, Police Scotland has no plans to commission any new custody facilities, although should this change in the future, the principles contained in Police Scotland's Custody Estate Strategy and the Custody Estate Investment Plan will be reviewed and implemented.



The UK NPM made 2 further recommendations in their own independent review report in August 2021. These are;

- 1. Implement all CPT recommendations and regularly monitor progress on this implementation now and in the future. The Scottish NPM members are available to assist with this and welcome close cooperation on this matter.*
- 2. Undertake concerted and coordinated action between the executive, police, prosecution services and the courts to give full effect to the presumption of liberty. This will go some way to addressing the systemic issues at the heart of many CPT recommendations.*

**Current Status:**

Criminal Justice Services Division, Continuous Improvement Unit intend to address the first recommendation in conjunction with HMICS and ICVS which are the NPM members relative to Police custody in Scotland. The second recommendation is already covered under CPT Recommendation 12-18 above and is being addressed under the Recover, Renew and Transform Programme. This requires wider criminal justice sector reform which will take some time to develop and implement.