

<b>Meeting</b>	<b>Scottish Police Authority Strategy, Policy and Performance Committee</b>
<b>Date</b>	<b>28 May 2020</b>
<b>Location</b>	<b>Teleconference</b>
<b>Title of Paper</b>	<b>Independent Custody Visiting Scotland (ICVS) Update Report</b>
<b>Presented By</b>	<b>Kirsty Scott, Independent Custody Visiting National Manager</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>Yes</b>

**PURPOSE**

To provide summary information on the delivery of Independent Custody Visiting, including where SPA has an oversight and scrutiny role of Police Scotland Custody. This report will also highlight for Committee events during Operation Talla.

## 1. BACKGROUND

- 1.1 Police custody is a high risk area within policing and, as such, has been subject to considerable scrutiny by HMICS. Officers and custody staffs main priority is to keep people in custody fit and well, assessing and providing the most appropriate care and welfare and maintaining the rights of every individual that arrives in custody.
- 1.2 The Police and Fire Reform (Scotland) Act 2012, **Section 93**, sets out SPA's responsibility for organising and overseeing the delivery of Independent Custody Visiting with the SPA. Purpose being to provide independent oversight of Police Scotland custody to ensure that detainees are being treated fairly and in accordance with the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It aims to prevent ill-treatment through establishing a system of regular visits to places of detention. OPCAT requires that the state designates a 'National Preventive Mechanism' (NPM) to carry out visits.
- 1.3 The UK NPM was established in 2009 to deliver the UK's obligations under OPCAT. It is made up of 21 Independent public bodies that have a role to monitor places of detention across Scotland, England, Wales and Northern Ireland. This includes police custody, prison, court custody, immigration and military detention, secure children's homes and places where people are detained under the mental health legislation. NPM members have the power to enter places of detention and speak to detainees and staff in private. Judith Robertson, Chair of the Scottish Human Rights Commission, also chairs the NPM's Scottish Sub group.
- 1.4 Preventing the ill treatment of people who are detained in police custody constitutes a significant part of the NPM's work. In Scotland, both ICVS and HMICS have played important roles, through their visit to and inspections of police custody, in building assurance and confidence that detainees are held in appropriate conditions and that our international obligations to respect detainee's human rights are maintained. The work of ICVS and HMICS shares a common purpose – the frequent visits by ICVS complement the more in-depth, but less frequent, inspections by HMICS to help deliver the OPCAT mandate. There is now a MoU between both organisations to set out how HMICS and the SPA, ICVS intend to work together to fulfil their common purpose of monitoring (Appendix 1).
- 1.5 Overall responsibility for the central management of the scheme is by a National Manager supported by three Regional Coordinators, North, East and West. Recruitment for visitors is based on clear role descriptions, as well as person specifications setting out the qualities ICVs require to carry out their role effectively set out in the Code of Practice (Appendix 2).
- 1.6 Independent Custody Visitors (ICVs) are members of the local community who volunteer to check on the welfare of people detained in police custody

in Scotland. Visitors attend police stations unannounced in pairs and write short reports about their visit. The SPA ICVS team is then informed of any issues that arise during a visit to consider if action is required and any actions are followed up at meetings with the local Cluster Inspector.

## 2. FURTHER DETAIL ON THE REPORT TOPIC

2.1 A recent report <sup>1</sup> from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that the material conditions in all police facilities visited in Scotland were generally of reasonable standard for short stays (i.e. up to 24 hours). However, most facilities also held detained persons for longer stays (i.e. from Friday evening until Monday morning when courts re-opened).

2.2 Thematic inspection by HM Inspectorate of Constabulary in Scotland (HMICS) into the Scottish Police Authority recommended that the authority should improve visibility of the work of the Independent Custody Visiting Scheme, direct scrutiny of custody arrangements and outcomes for detainees and that it should also review the optimum governance and delivery options for the Independent Custody Visiting Scheme.

### 2.3 Governance

OPCAT sets out both international and national framework for monitoring detention. The National Preventive Mechanism (NPM) facilitates decision – making, oversees development and implementation of the schemes in the UK. Members may wish to consider for future meetings input from NPM representative, to provide an overview of ICVS and the SPA involvement.

**Section 94** places duty on the SPA to make arrangements for visiting detainees. **Section 95** specifies that SPA make arrangements for visits by Subcommittee to visit detainees, access information relevant to their detention and to monitor their treatment and conditions they are held in.

The role of the Board is to keep arrangements under review and revise them, and to prepare and publish any reports required by the Scottish Ministers.

### 2.4 Business as usual - issues in Police custody

The majority of issues raised are resolved at the time of visit, including identifying and recording any follow up actions with the cluster inspector. Given the preventive nature of the scheme, this provides the most satisfactory resolution for the majority of visits.

Those that are not resolved at that time are escalated to the regional coordinators and outcomes are discussed. The coordinators will follow up and liaise with the relevant cluster Inspector. This also forms the

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<sup>1</sup> <https://rm.coe.int/1680982a3e>

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discussions at quarterly meetings with Police Scotland and custody visitors.

Concerns not resolved at the time or actions outstanding including reoccurring issues such as national contracts are escalated to the national manager who will then link in at a strategic senior level with Criminal justice officers and discuss findings with the National Preventive Mechanism under OPCAT

Issues include;

- More recent the national contract for transferring detainees has been highlighted as a concern with regards to time spent in vehicles, for instance longer distances and for extended periods of time, this is down to a number of factors relating to GeoAmey staffing numbers and the depots in use at the time of the transfer request. This has become more regular with the new measures in place and limited resources.
- Consistency of national stock issue i.e. 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.
- Delivery of the national repairs and maintenance 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.
- Consistency of national contract for supplying detainee meals regarding the selection of items available, standard of meals supplied and nutritional value.
- Individuals being offered shower has always been an issue for ICVS, and where possible everyone should be offered a wash/shower regardless of how long they have been held in custody. Not all centres have shower facilities and hand washing facilities to allow a basic wash.
- Lack of exercise is an on-going issue, especially for those detained over the weekend and during public holidays. Not all custody centres have these facilities however the small number that do they are not being used.

## 2.5 Operation Talla

ICVS Suspended custody visiting in Scotland on 18 March 2020 the decision was made in the best interest of the health of our visitors, detainee's custody officers and staff. During the pandemic, ICVS will be delivering remote monitoring of police custody whilst visits are paused.

The common way of conducting oversight is through reviewing custody records to oversee and monitor the care provided to detainees.

Searches carried out on custody records include

- Live/current cases in custody
- 1 search per week per custody Centre as per visit rota

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- Weekend searches
- Suspected/ confirmed COVID19 cases

Our findings during this period to date include

- Time spent in transportation vehicle with regards to Covid-19 cases, there is concern over time spent in holding vehicles. Either due to location of the Covid-19 hub, availability and age of detainee.
- Powers of Police Scotland under covid-19 and the issuing of up to 4 regulation tickets to an individual, ICVS have concern with regards to issuing tickets to individuals who have some form of mental health issues and or requiring an appropriate adult at the time of issuing these.
- Individuals being offered shower has always been an issue for ICVS, and due to unknown risk of covid-19 Police Scotland were advised by NHS partners that they should not be showering any persons in custody who have Covid19/suspect Covid19 due to the risk of contamination and passing on the virus. However ICVS challenged this, working in partnership with Human Rights Commission. Police Scotland have now amended the guidance on care and welfare.
- In some centres the decision was made to not make reading material available to detainees due to risk of transmitting infection. However on challenging this, it was then brought to the national Health and Safety meeting and the outcome was that detainees were able to be provided with these items after 72 hours since last detainee had access.
- Basic hand washing requirements in line with Government guidelines is not being recorded.
- There is no consistent approach to testing those held in police custody in line with prison service, including consent to testing.

The team are currently carrying out testing of the new telephone monitoring process, whereby visitors will be able to dial into custody and speak to detainees to carry out care and welfare interview.

### **Benchmarking**

This process and the remote dip sample has been benchmarked and tested in line with other custody schemes throughout the UK. Our evolving approach is in line with guidance sought from the Independent custody visiting association (ICVA)

ICVA have provided a breakdown of what other schemes are doing

*Out of 46 members (including Jersey, Scotland and Northern Ireland as well as England and Wales):*

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- *Six are still running some kind of face to face visits. A handful are considering re-starting and are waiting to see what the impact of the announcements over the past few days are on this figure.*
  - *10 are running remote visits - either by telephone or video.*
  - *11 are running custody record reviews / dip sampling of custody records.*
  - *Nine have the scheme manager in direct contact with custody staff to receive feedback and ask questions.*
  - *Nine have not shared specifics of what they are doing to monitor custody, although we are getting regular feedback from some of these.*
- Finally, in one area, the scheme manager is running spot checks in custody*

## **2.6 Next steps**

The committee may wish to consider the following areas for consideration;

- Improving quality assurance in respect of visitor's reports as data is basic and could be developed through better use of technology;
- Ways in which the impact of our visitors voices and observations could be strengthened in order to develop and improve community oversight.
- Wider, more effective communication of ICVS findings and the work of ICVS in Scotland internally and externally i.e. benchmarking with other schemes in the UK to make better use of social media platforms.
- Achieving equitable conditions and standards across the custody estate ensuring best value.
- Regular updates from National Manager to include direction of travel and effectiveness of Independent Custody visiting

## **3. FINANCIAL IMPLICATIONS**

- 3.1 For 19/20 the SPA has invested £243,978 in administering the Independent Custody Visiting scheme, this includes visitor expenses, salaries, transport costs and supplies and services. This is in line with year-on-year expenditure figures below and is consistent with the reduction in number of visits carried out by custody visitors, as a result of closure of custody centres throughout Police Scotland estate.

2018 actual spend £258,318.

2017 actual spend £238,698

2016 actual spend £247,706

#### **4. PERSONNEL IMPLICATIONS**

4.1 There are no personnel implications associated with this paper.

#### **5. LEGAL IMPLICATIONS**

5.1 There are no legal implications with this paper.

#### **6. REPUTATIONAL IMPLICATIONS**

6.1 There are no reputational implications associated with this paper. However the scheme has a role to play in providing assurance that people held in police custody are looked after<sup>2</sup>.

#### **7. SOCIAL IMPLICATIONS**

7.1 There are no social implications associated with this paper.

#### **8. COMMUNITY IMPACT**

8.1 There are no community implications associated with this paper. However the recruitment of ICV visitors, aim to represent the communities they serve.

#### **9. EQUALITIES IMPLICATIONS**

9.1 There are no equality implications associated with this paper, although the scheme seeks to be representative of the communities in Scotland taking account of different ethnic backgrounds, gender and age ranges. When new visitors are appointed to the scheme, consideration is given to enhancing this representation.

#### **10. ENVIRONMENT IMPLICATIONS**

10.1 There are no environmental implications associated with this paper.

**RECOMMENDATIONS:** Members are requested to note the contents of the report.

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<sup>2</sup> <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/PoliceSPPF/SPPF2010-11Addenda/Section1-4>

APPENDIX 2 – CODE OF PRACTICE

# Code of Practice on Independent Custody Visiting in Scotland





## Introduction

1. This Code of Practice on independent custody visiting in Scotland is issued in accordance with Chapter 16 of the Police and Fire Reform (Scotland) Act 2012. Criminal Justice Services Division of the Police Service of Scotland and Independent Custody Visitors (ICVs) shall have regard to the Code in carrying out their relevant functions. Throughout this Code, the term 'police' and 'the Authority' refers to the Police Service of Scotland and the Scottish Police Authority.
2. Independent custody visiting is the well-established system whereby volunteers attend police stations to check on the treatment of detainees and the conditions in which they are held and that their rights and entitlements are being observed. This offers protections to detainees and the police and reassurance to the community at large.
3. The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 extends ICVs remit to terrorist suspects in detention. This Code of Practice includes how this would operate in practice – given the variances between terrorist and non-terrorist investigations and statutory frameworks; there are differences in how independent custody visiting operates in relation to terrorist suspects in detention.
4. The Code is to be supported by a scheme handbook setting out National Standards, which will expand on the relevant procedures and systems and set out established good practice.

## Legislation

5. Chapter 16 of the Police and Fire Reform (Scotland) Act 2012 requires the Authority to make arrangements for detainees to be visited by ICVs. Such arrangements may make provision for access to detainees by ICVs, examination of records, inspection of detention facilities.
6. Section 12 of the Police and Fire Reform Act 2012 (Consequential Provisions and Modifications) Order 2013 introduces two changes to legislation which are intended to strengthen the independent monitoring of the detention and treatment of terrorist detainees. These changes allow:
  - a) that the arrangements made by the Authority for ICVs include a requirement that reports about visits made to terrorist detainees are submitted to the Independent Reviewer of Terrorism Legislation (IRTL) as well as to the Authority. The amendments also allow ICVs to listen and view audio and video recordings of interviews with suspected terrorist detainees, subject to any restrictions on such access, which must be specified in this Code of Practice (please see paragraphs 64-70 for further information).
7. Enactment of the Public Services Reform (Inspection and Monitoring of Prisons) Order 2015 on 31 August 2015, passed responsibility for monitoring Legalised Police Cells (LPC) to Independent Custody Visiting Scotland (ICVS).

## Organisation and Infrastructure

8. Section 94 of the Police and Fire Reform (Scotland) Act 2012 places the responsibility for organising and overseeing the delivery of Independent Custody Visiting with the Authority. The Authority must therefore ensure that it has in place robust and effective procedures for establishing and maintaining its independent custody visiting scheme, including the allocation of appropriate resources to this function.
9. Overall responsibility for the central administration of the scheme will be with the National Manager, supported as necessary by the Regional Coordinators and other resources.
10. At regional level, groups of volunteers must be organised to visit police stations in the area. A Regional Coordinator will have responsibility for these groups locally. Paragraphs 22-23 below explain the arrangements for ICVs who are accredited to visit TACT detainees.

## Recruitment and Conditions of Service

### Organising Recruitment

11. The Authority is responsible for recruiting, selecting and appointing ICVs and must ensure these functions are adequately resourced.
12. Adequate numbers of suitably trained and accredited ICVs must be available at all times. Paragraphs 22-23 explain the arrangements for ICVs who are trained to visit TACT detainees.

### The Recruitment Process

13. Recruitment must be based on a clear role description, as well as person specifications (Appendix A) setting out the qualities ICVs require to carry out their role effectively.
14. Recruitment must be open, diverse and well publicised.
15. All selections must be made on the basis of the standard application form.
16. No person shall be appointed as an ICV without an interview taking place. The selection panel must record the reasons for decisions about appointment or non-appointment. Any appointment must be made solely on merit. Any appointment is subject to vetting or security clearance for all ICVs to an appropriate level as determined by the Authority. ICVs who visit TACT detainees must have Security Check (SC) level clearance and have undertaken the specific training provided for visiting TACT detainees (see paragraphs 35-36 for details of the training). Before renewing the appointment of an individual ICV, the Regional Coordinator must ensure that appropriate vetting or security clearance remains valid until the end of the period of appointment (see paragraph 27 below).
17. All ICVs must be at least 18 years old and must be living or working within the Authority area, having been resident in the UK for at least three years prior to the date of application. ICVs trained to visit TACT detainees will need to have completed the training which is a condition of carrying out this role.

ICVs must have successfully completed 18 months of custody visits before they can be considered for TACT detainee visits. Paragraphs 35-36 provide more detail on the training for these roles.

## Who should be selected?

18. The National Manager must seek to ensure that the overall group of ICVs is representative of the local community and provides a suitable balance in terms of age, gender and ethnicity.

19. All reasonable adjustments, as defined in the Equality Act 2010, must be made to accommodate those with a disability. Where it is proposed to appoint as an ICV an individual who does not have English as their first language but who is able to communicate effectively so as to be understood, and is otherwise considered to be a suitable candidate, he/she must be informed that visits with detainees are carried out in English as is all documentation relating to detainees.

20. ICVs must be independent persons who are able to make informed and justified judgements and unbiased observations in which the community can have confidence and which the police will accept as fair criticism.

21. Where an applicant has one or more convictions for criminal offences, or has received any formal caution, warning or reprimand, or has failed to disclose any such finding, the specific circumstances must be considered in assessing suitability to become an ICV. However, past offending is not an automatic barrier to acceptance. The vetting unit should provide advice to enable the Authority to make a decision with regard to the suitability of each applicant. Ultimately, the National Manager is responsible for all appointments of ICVs – subject to meeting the requirements (for example vetting) set out in this guidance.

22. In appointing ICVs, care must be taken to avoid any potential conflict of interest. For example, serving police officers and other serving members of police or Authority staff will be unsuitable for that reason. The same will apply to special constables and anyone holding judicial office.

## ICVs visiting TACT detainees

23. The selection of ICVs for TACT detainee visits will draw on the existing structures whereby ICVs are associated with the scheme administered by the Regional Coordinators.

24. ICVs for TACT detainee visits will be drawn from those areas close to where terrorism detention takes place.

## Basis of Service

25. The Authority must provide each ICV with a written volunteer agreement summarising their agreed responsibilities and the legitimate expectations of both parties.

26. The Authority must provide each ICV with an identity card as their authority to visit any police station in the force area that is holding detainees on a regular or temporary basis.

## Tenure

27. Appointments as a visitor will initially be for three years and must not be confirmed until a six-month probationary period has been satisfactorily completed. Full reassessments of suitability must take place at regular intervals but no longer than three years apart. The key factors in renewing appointments for further periods must be the continuing ability and willingness of the individuals involved to do the role effectively. Any decision not to renew the appointment must follow the principles of natural justice. There are additional training and selection requirements for TACT visitors as set out in paragraphs 35-36.

## Removal

28. The Authority can terminate an ICV's appointment because of misconduct or poor performance.

29. Procedures for considering possible termination of appointment must follow the principles of natural justice and must be noted in the scheme's Visitor Agreement.

## Complaints Procedures

30. Procedures are in place to deal with complaints against ICVs by detainees, police personnel or others. Equally, there is also a clear mechanism for handling any complaints from ICVs.

## Payment

31. ICVs are entitled to be reimbursed for their legitimate expenses incurred in carrying out their role.

## Insurance

32. The Authority must ensure adequate cover and provision for claims arising from an ICV's role.

## Training

33. The basic responsibility for initial and ongoing training lies with the Authority.

34. The Authority must evaluate the effectiveness of training and the extent to which it is achieving its objectives.

## Training, selection and guidance for ICVs visiting TACT detainees

35. The Authority, with Home Office support, is responsible for developing and keeping under review an additional training package for ICVs visiting TACT detainees. Training will cover an explanation of the legal framework, review process, arrangements for visits, the role of the IRTL and how ICVs will work with the IRTL in carrying out their functions, and the conduct and reporting of visits.

36. ICVs visiting TACT detainees require to successfully complete training for this role. ICVs must have completed eighteen months of custody visits before they can be considered for TACT detainee visits. Selection, performance management and de-selection of TACT ICVs are the responsibility of the National Manager.

## Frequency and Coverage

37. Visits must be sufficiently regular to support the effectiveness of the system, but not so frequent as to interfere unreasonably with the work of the police.
38. The frequency of visits must be monitored to ensure that agreed rotas are being met. Where insufficient visits are taking place, the causes must be investigated and corrective action taken.
39. Visits will be made to all custody suites within the estate of Criminal Justice Services Division. This will include those classed as ancillary centres.

## Visiting TACT detainees

40. In respect of detention, ICVs regularly conduct unannounced visits to police stations. This element of "spot-checking" is an important tool in ensuring ICVs are able to provide an accurate "snapshot" account of detention conditions. Appropriately trained and security cleared ICVs may still undertake unannounced visits to the Scottish Terrorist Detention Centre (STDC), but given the low number of TACT arrests in comparison to other arrests, it is unlikely that a terrorist suspect will be in detention during visits which are conducted on an ad hoc basis. For this reason, the National Manager will be notified when terrorist detentions take place.
41. This notification will be made by the STDC Co-ordinator or Cluster Inspector as soon as practicable after the detainee has arrived at the detention suite.
42. The National Manager will inform appropriately trained and security cleared ICVs that an individual has been detained and arrangements made for the visit.
43. The selected pair of ICVs may visit unannounced but a police officer of at least Inspector rank may delay access until such a time as is practicable (as set out in Section 94(4) of the Police and Fire Reform (Scotland) Act 2012 and in paragraphs 50 and 52 of this Code). The police will accommodate an initial visit as early as possible, although visits may need to be delayed where multiple arrests take place simultaneously in order to allow detainees to be processed. This ensures that detainees are able to receive notice of their statutory rights, and to exercise their right to inform someone of their arrest and receive legal advice. The process also ensures that the police are able to collect any necessary physical evidence from a person for analysis (e.g. forensic samples, DNA profiles, fingerprints etc.). However, ICVs should be able to conduct an initial visit as soon as is practicable after the detainee has arrived at the detention suite.
44. Pre-charge detention under TACT can continue up to a maximum of 14 days. Therefore, subsequent visits by appropriately trained ICVs may be appropriate but this will depend on the length of the detention. Subsequent visits may take place until the detainee is charged or released. As a matter of good

practice, different pairs of ICVs should visit the same detainee in the same pre-charge detention period. The police cannot direct when ICVs should conduct their visits; ICVs can visit a detainee whenever they wish – subject to the detainee’s consent.

## Visiting Legalised Police Cells

45. Legalised Police Cells (LPC’s), which are unique to certain parts of Scotland, derive historically from the inaccessibility of the Scottish courts in outlying districts and islands. These police cells have been “legalised” and as such are used to hold prisoners awaiting trial locally, or who have been returned from prison for sentencing or following conviction, pending transfer to prison. Prisoners held in the LPC’s are detained under the provisions of the Prison and Young Offenders Institutions (Scotland) Rules 2011. There are four designated police stations which may be used as legalised cells. These are Lerwick, Kirkwall, Stornoway and Hawick.

## Working arrangements

### Conducting Visits

46. To ensure the safety, wellbeing and integrity of volunteers, visits must be undertaken by pairs of ICVs working together.

### Visiting Procedures at Stations

47. ICVs must be admitted to the custody area immediately. Delay is only permitted when immediate access may place the ICV or another individual within the custody area in danger. A full explanation must be given to the ICV as to why access is being delayed and that explanation must be recorded by the ICVs in their report.
48. ICVs must have access to all parts of the custody area and to associated facilities, such as cell accommodation, washing and toilet facilities, facilities for the provision of food and medical rooms (which in some cases may only be accessible when the force’s healthcare practitioner is present) for the purposes of inspection. However it is not part of their role to attend police interviews with detainees. ICVs will be allowed access to CCTV cameras and systems to ensure that they are operational but may not view live monitoring of detainees.
49. Police custody staff must be alert to any specific health or safety risks ICVs might face and must advise them appropriately at the commencement of the visit.
50. The custody officer or a member of custody staff (escorting officer) must accompany ICVs during visits (subject to paragraph 55).

## Access to Detainees

51. Subject to the exceptions referred to in paragraph 55, ICVs must be allowed access to any person detained at the police station. However only ICVs who have undergone the appropriate security vetting and training will be permitted access to TACT detainees, irrespective of where they are being held. Detainees may only be interviewed with their consent which will be established by the escorting officer explaining the purpose of the ICV visit and asking the detainee whether they are willing to speak with the ICVs.
52. Children may be spoken to with their own consent after it has been established that they understand the purpose of the visit. If, for whatever reason, a detainee is not in a position to give consent, the escorting officer must allow the visit unless any of the circumstances set out in paragraph 52 apply.
53. In accordance with Section 94(4) of the Police and Fire Reform (Scotland) Act 2012 and the Independent Custody Visiting (Grounds for Refusal of Access) Determination 2013, the custody officer may only refuse ICVs access to a specific detainee only if authorised by an officer of, or above, the rank of inspector and where:
  - a) denying a visit is necessary for an independent custody visitor's safety;
  - b) such access could seriously interfere with the process of justice;
  - c) there are urgent and compelling grounds of public safety;
  - d) there is serious disorder in the place to be visited that temporarily prevents carrying out of such a visit;
  - e) there is a period of emergency, either national or more local, for example a health pandemic;
  - f) there is a natural disaster.
54. Where any of the circumstances referred to in paragraph 52 apply, consideration should be given to allowing the ICVs some limited form of access to the detainee, such as speaking through the cell hatch or seeking consent to view the custody record. Such a refusal under a specified reason at paragraph 52 would not prevent the ICVs from inspecting the rest of the detention facility.
55. Any decision to deny or limit access must be recorded in the detainee's custody record (together with the relevant authorisation) and by the ICVs in their report of the visit.

## Discussions with Detainees

56. The custody officer accompanying ICVs at the place of detention will read a cue card to the detainee within earshot of the ICVs informing the detainee that ICVs are in attendance requesting to visit for the purposes of discussing with him/her their treatment while detained and the conditions in which they are detained. The detainee should then be asked by the custody officer whether he/she is content to meet the ICVs. If their response is "Yes" the visit proceeds, but should the response be "No" then no visit will take place and ICVs will record the circumstances in their report. If a detainee declines they will be asked if the ICVs can view their custody record.
57. Discussions between detainees and ICVs must, wherever practicable, take place in the sight, but out of the hearing, of the escorting police officer or member of custody staff. Where this is not possible, the escorting officer will not take any active part in the conversation or actively listen to conversations

between ICVs and detainees. For TACT detainees, the security escort will remain with the ICVs.

58. Discussions must focus on checking whether detainees have been offered their letter of rights in accordance with Scottish Statutory Instrument 2014/159; The Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014), their health and wellbeing and confirming whether the conditions of detention are adequate.
59. ICVs must remain impartial and must not seek to involve themselves in any way in the process of investigation. If a detainee seeks to make admissions or otherwise discuss an alleged offence, the ICV must tell them that the relevant contents of the visit will be made known to the custody officer and may be disclosed in legal proceedings.
60. If an ICV realises they know or are known by a detainee, they must declare this and consider whether to withdraw from the visit.
61. ICVs must not pass messages to or from detainees or offer to perform other tasks on their behalf. If they are asked to do so, they must immediately inform the custody officer.
62. If a detainee indicates to an ICV that they may harm themselves or any other person, this must immediately be brought to the attention of the custody staff.
63. Section 94 (3) (b) of the Police and Fire Reform Act 2012 authorises ICVs to examine records relating to detainees however it is best practice to obtain the detainee's consent to examine their custody record and allow the ICVs to check its contents against what they have been told by the detainee. This will provide ICVs with an overview as to how the detention has been carried out. ICVs may also have access to other relevant documentation, which relates to a detainee e.g. risk assessment. All such information must be treated confidentially.
64. If a detainee is for any reason incapable of deciding whether to allow access to their custody record, the presumption must be in favour of allowing the ICVs to examine it.

## Audio and video recording of TACT interviews

65. ICVs visiting TACT detainees may request that they are given access to audio or video recordings of interviews. ICVs may only request access to the whole or part of the audio or video recordings of any interview that has been conducted during the period of detention:
66. At the request of the detainee; or  
Where the ICVs have particular concerns about the conduct of an interview (the consent of the detainee will still be required).  
  
such a request will only be in order to:
  - a) ensure that the detainee has been offered their rights and entitlements under TACT;
  - b) that their health and wellbeing has been ensured throughout; and
  - c) that the relevant statutory code of practice has been followed.



67. Given the interests of the detainee will be protected by their legal representative and, if relevant, an appropriate adult, during the interview, the ICV will not routinely need to access audio or video recordings of TACT interviews. Should the ICV continue to have concerns after viewing the recording, they should take this up as soon as possible with the custody officer in order to seek a resolution.
68. Access to the whole or part of an audio or video recording of an interview may only be denied to ICVs if:
- a) It appears to an officer of, or above, the rank of Inspector that there are grounds for denying access (as set out in paragraph 67) at the time it is requested; and
  - b) The procedural requirements imposed by the arrangements in relation to a denial of access to such recordings are complied with.
69. The only permitted grounds for denying access to the whole or part of an audio or video recording of an interview under paragraph 66(a) above are:
- a) If the officer reasonably believes that it is not practicable to provide access at the time it is requested; or
  - b) If the officer reasonably believes that such access could interfere with the process of justice.
70. In the case of access being denied to audio or video recordings, an explanation must be given to the ICVs and this must be recorded on both the visit report form and the custody record.
71. ICVs will not be permitted to watch or attend live interviews of terrorist suspects.
72. ICV access to audio or video recordings of interviews must always be subject to obtaining the consent of the detainee. Consent will need to be obtained at each separate visit.

## Medical Issues

73. ICVs have no right to see a detainee's medical records, even where these are attached to the custody record. However, key points relevant to medical treatment required while in custody should be recorded in the custody record itself and may be viewed.

## Dealing with Issues and Complaints

74. Where a detainee makes a complaint or raises an issue about their general treatment or conditions, ICVs must (subject to the detainee's consent) take this up as soon as possible with the custody officer in order to seek a resolution. The same applies to similar issues identified by ICVs in the course of their attendance.
75. If a detainee makes a complaint of misconduct by a specific police officer, they must be advised to address it to the duty officer in charge of the police station.

## Effective Working Relationships

76. For independent custody visiting to be effective, it is essential that ICVs and police staff develop and maintain professional working relationships based on mutual respect and understanding of each other's legitimate roles.

## Reporting on a Visit

77. At the end of each visit, and while they are still at the police station, ICVs must complete a report of their findings to include conditions and facilities, rights and entitlements and health and well-being. One copy of the report will remain at the station for the attention of the officer in charge and the other copy must go to the Authority.
78. Report forms must include an undertaking not to reveal the names (if known) of persons visited or other confidential information obtained in the course of a visit.

## TACT detainees

79. Reports of visits should be submitted to the IRTL and to the Authority. Coordination of reports will be done via the ICV National Manager or Regional Coordinator.

## Feedback

80. Systems must be in place to ensure that the output from visits is drawn to the attention of those in a position to make the appropriate response.
81. The National Manager is responsible for drawing together issues and identifying trends emerging from visits and addressing these with relevant police supervisors.
82. The National Manager must have a regular and formal opportunity to raise concerns and issues with a designated senior officer within Criminal Justice Services Division.
83. In addition, for TACT detainees the IRTL may choose to follow up issues separately.

## Sharing Experience

84. The Authority must ensure that ICVs have regular opportunities to meet together to discuss their work.

## Reviewing Performance

85. The Authority must take steps to assess how effectively their independent custody visiting arrangements are working. Key aspects of that process will be having regard to the ICV handbook, including quality assurance in respect of reports, remedial actions taken by the police in response to issues raised, the frequency with which visits take place and the number of occasions on which detainees refuse to speak to ICVs. An annual report will be prepared in this regard.





Improving  
Policing  
Across  
Scotland

SCOTTISH POLICE  
AUTHORITY

## Memorandum of Understanding

HM Inspectorate of Constabulary in Scotland (HMICS)  
and

Independent Custody Visiting Scheme, Scottish Police Authority (SPA)

This Memorandum of Understanding (MoU) sets out how HM Inspectorate of Constabulary in Scotland (HMICS) and the Scottish Police Authority's Independent Custody Visiting Scheme (ICVS) intend to work together to fulfil their common purpose of monitoring the treatment of detainees and the conditions of detention in police custody centres in Scotland. It describes our respective roles and outlines ways in which we will work together to promote positive outcomes for detainees and to minimise our scrutiny footprint, while also maintaining our independence from one another and from Police Scotland.

### Background

In 2003, the UK government ratified the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT requires the UK to identify a 'National Preventive Mechanism', an independent body or group of bodies that regularly examine the conditions of detention and the treatment of detainees. HMICS and ICVS have both been designated as members of the UK's NPM by the government, and our work in respect of police custody centres contributes to the implementation of OPCAT in the UK and the prevention of ill-treatment of detainees in police custody.

### The role of HMICS

The statutory role of HMICS is set out in sections 71 to 82 of the Police and Fire Reform (Scotland) Act 2012. The role of HMICS is to make inquiries about the state, efficiency and effectiveness of the Scottish Police Authority and Police Scotland. HMICS carries out regular inspections of police custody to assess the treatment of and conditions for detainees, in keeping with its role as a member of the NPM. HMICS publishes reports of its inspections, highlighting effective practice and making recommendations to support improvement where necessary.

### The role of ICVS

The statutory purpose of independent custody visiting is set out in section 93 of the Police and Fire Reform (Scotland) Act 2012. The Act states that the purpose of custody visiting is the prevention of ill-treatment and the implementation of OPCAT. Volunteers from the local community known as independent custody visitors make regular visits to police custody centres in Scotland. ICVS publishes an annual report of their findings and observations.



## Working together

HMICS and ICVS have separate but complementary roles in respect of police custody centres. Inspections by HMICS and visits by independent custody visitors are carried out independently, but share a common purpose under OPCAT. This Memorandum of Understanding formalises the collaborative work and sharing of information that already takes place between HMICS and ICVS, with a view to supporting improvements in the delivery of police custody.

Such collaborative work will include:

- maintaining effective communication and liaison
- sharing knowledge, skills and experience
- sharing relevant information and respecting the confidentiality of shared information
- working together where appropriate.

Specifically, our collaborative work will include:

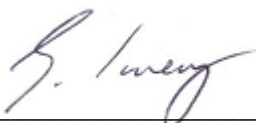
- HMICS will seek the views, experiences and observations of independent custody visitors to inform its inspections of police custody
- ICVS will consider the findings and recommendations made by HMICS and provide feedback on the implementation of recommendations where appropriate.

## Review

The partners will review this Memorandum of Understanding every two years to consider whether it requires updating to meet changing circumstances. This Memorandum may also be modified between regular reviews by mutual consent of the partners.

## Duration

This Memorandum shall become effective upon signature by authorised officials of the partners and will remain in effect (as modified from time to time by mutual consent as aforesaid) until terminated by either partner.



\_\_\_\_\_  
(Partner signature)

Date:

HM Chief Inspector of Constabulary in Scotland



\_\_\_\_\_  
(Partner signature)

Date:

Scottish Police Authority

