

POLICE AND CRIME COMMISSIONER FOR LEICESTERSHIRE

ETHICS AND TRANSPARENCY PANEL

PAPER MARKED

Report of	OFFICE OF THE POLICE AND CRIME COMMISSIONER
Subject	CUSTODY DETENTION SCRUTINY PANEL (CDSP)
Date	TUESDAY 28 JUNE 2023 13:00 – 15:00
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Purpose of Report

1. The purpose of this report is to outline the introduction of Custody Detention Scrutiny Panels (CDSP) and how they will be delivered to help with identifying key areas for improvement, especially around systemic, cultural and adopted practices that impact on detainees whilst in police custody. The intention is for CDSPs to allow for increased scrutiny and help in bringing local communities closer to decision-making.
2. Following an initial scoping session, between the OPCC and Head of Custody, it was felt that there could be scope to explore CDSPs being incorporated into the work of the Ethics and Transparency Panel.

Recommendations

3. It is recommended that the Panel notes the content of the report. The Head of Custody seeks support to work with the OPCC and approach the Ethics and Transparency Panel members for their consent to embed CDSPs into their programme of work.
4. The panel is asked for their view on taking on an advisory role in providing independent assurance, through dip-sampling custody records, that detainees are being managed in an ethical and proportionate manner.

Background

5. Over the recent years, several independent reviews such as a 'Lammy Review' and the Commission on Race and Ethnic Disparities (CRED) have identified issues of disparity and inequality in the Criminal Justice System which has led to a trust deficit between communities and the police.

6. Whilst there are many independent scrutiny panels that exist across England and Wales to address many aspects of disproportionality within specific policing environments, there is no consistent approach to addressing disproportionality within detention environments.
7. With the support of the APCC and NPCC, forces have been asked to consider the introduction of review panels alongside Independent Custody Visiting Schemes for the regular and independent review of detainee treatment.

Custody Detention Scrutiny Panels

8. A CDSP is to be made up of a group of local people selected across the force area to represent the local communities. This is an element which has been identified to already align with the membership of those appointed to the Ethics and Transparency Panel. It is intended that the introduction and promotion of scrutiny and review will help in building trust and confidence in policing within communities by spotlighting good practice and strengthening the approach to learning and service improvement.
9. The primary objective of a CDSP is to independently; assess and report on detention and custody processes, review and advise on matters of disproportionality and assist in generating a transparent product suitable for public consideration at the end of each annual panel cycle. The vision is for this to be undertaken through the dip-sampling of custody records by panel members in advance of panel meetings with any necessary and relevant training being provided.
10. It is proposed that the Head of Custody be a member of the Panel meetings but should withdraw from any case review session to ensure that the Panel can deliberate and scrutinise freely. The Panel should then produce feedback to the Head of Custody and the Chief Officer Team (COT) in the case of escalating identified practice that may cause concern. It is requested that the Panel produce or contribute towards an annual report that is to be made available to the public.

Summary

11. The Ethics and Transparency Panel membership is independent, diverse and holds current vetting clearance and expertise in scrutinising police practice. The panel members are keen to scrutinise areas in policing that align to the national guidance for CDSPs, such as strip search and use of force and so their inclusion would seem an organic transition.
12. As the Panel already has a governance and reporting structure in place, this would make CDSP methodology alignment extremely simple and efficient. Embedding the scrutiny required for CDSPs into the remit of the Panel, would remove the need to create of a new body and avoid any duplication of forums for scrutiny and review.

Implications

Financial:	Nil
Legal:	Governance and procedures are in accordance with legislation and statutory guidance. Recent inspections and audits have confirmed good practice and robust compliance with legislation and guidance.
Equality Impact Assessment:	Current procedures are in line with existing Equality Impact Assessments in place within the Professional Standards Department.
Risks and Impact:	Insufficient capacity will lead to decline in timeliness. Inadequate professional training will have a detrimental effect on performance.
Link to Police and Crime Plan:	Proposal is in line with the Nolan Principles and Code of Ethics.
Communications:	Organisational briefings to be delivered for identified best practice and lessons learnt.

Background papers

Appendix 1 – NPCC Guidance / Recommendation on CDSP

Person to Contact

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The Introduction of
Custody Detention Scrutiny Panels (CDSPs)

A Guide for
Police & Crime Commissioners and Chief Constables

A joint guide developed by the National Police Chiefs' Council and the Association of Police & Crime Commissioners, with input from Ministry of Justice, Independent Custody Visiting Association and Home Office.

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Contents

Foreword.....	3
Overview	4
1 Why introduce Custody Detention Scrutiny Panels?	4
2 What is a Custody Detention Scrutiny Panel (CDSP)?.....	5
3 What will Police Detention Scrutiny Panels do?	5
4 Governance	6
5 Panel Membership.....	7
6 Panel Scope.....	9
7 Material selection principles.....	10
8 Operating Principles.....	11
9 Outputs	12

Custody Detention Scrutiny Panels (CDSPs)

Foreword

As national custody leads at the Association of Police & Crime Commissioners and the National Police Chiefs' Council, we both strive to provide our colleagues with a national voice, to recognise and highlight best practice, and to deliver guidance for local delivery, all with the aim of supporting the delivery of safe, effective, and transparent custody.

The Custody Detention Scrutiny Panels guidance before you has been developed to increase transparency, scrutiny and performance within police custody. It's development has been cognisant of recent high-profile incidents of public concern, that have had negative consequences for police confidence and trust, as well as various national recommendations made to policing on both racial disproportionality and custody.

Whilst developing the guide we have sought the views of individual Police Forces and Police and Crime Commissioners (PCCs), as well as the Ministry of Justice and the Independent Custody Visiting Association. We have also sought to build upon existing practice in policing, including Stop and Search panels.

We hope the guide provides you the necessary support to deliver Custody Detention Scrutiny Panels locally and help bring local communities closer to decision making, as well as providing opportunity for learning internally.

As authors and national leads, we are committed to keeping the guidance under review and encourage your feedback and details of your progress in delivering these Panels.

Overview

This document provides guidance to Police and Crime Commissioners and Chief Officers for consideration and local agreement in the implementation and governance of Police Detention Scrutiny Panels.

Whilst a wide range of legislation encapsulates lawful activity and HMICFRS determines compliance and areas for improvement, few mechanisms, other than independent custody visiting schemes exist for the regular, independent review of detainee treatment of those in police detention.

With the support of APCC and NPCC, policing areas should consider the introduction of review Panels which would identify both good and poor systemic, cultural, and adopted practices that impact on detainees whilst in police care.

This document supports the:

- College of Policing APP for Detention and Custody
- NPCC Custody Strategy 2022
- The Report of the Commission on Race and Ethnic Disparities
- Independent Advisory Panel of Deaths in Custody (IAPDC) guidance on policy and best practice
- Independent Review of Deaths and Serious Incidents in Police Custody

1 Why introduce Custody Detention Scrutiny Panels?

Over recent years, several independent reviews such as the ‘Lammy Review,’ ‘Angiolini Review’ and the Commission on Race and Ethnic Disparities (CRED) have identified issues of disparity and inequality in the Criminal Justice System which has led to a trust deficit between communities and the police.

Of the four overarching aims of the CRED, the first is to “build trust between different communities and institutions that serve them.” Despite much well publicised material and efforts to implement mandatory training on the nature of discrimination and race issues, gaps in confidence remain between policing and the community it serves.

The primary objective of a Police Detention Scrutiny Panel is to independently:

- assess and report on detention and custody processes;
- review and advise on matters of disproportionality; and
- assist in generating a transparent product suitable for public consideration at the end of each annual Panel cycle.

Various independent scrutiny Panels have already been established by PCCs and Police Forces across England and Wales to understand and address many aspects of disproportionality

within specific policing environments e.g. stop & search scrutiny Panels.¹ However, there is no consistent approach to addressing disproportionality within detention profiles.

It is intended that the introduction and promotion of scrutiny and review will help build trust and confidence in policing in ethnic minority and other communities, particularly if PCCs and Chief Officers work together to agree a consistent and comparative CDSP approach to address what remains a national matter of concern, irrespective of location.

A lack of transparency in this area of policing can lead to a sense of fear and exclusion expressed in disengagement by representatives of key minority interests in the policing area.

The introduction of scrutiny can dispel myths surrounding the detention and custody environments. With the necessary commitment from all stakeholders, it has the potential to reassure the public, policing area observers and other interested parties that PCCs and Chief Officers alike take the concerns surrounding disproportionality seriously, and more importantly, are prepared to do something about it when it is exposed.

2 What is a Custody Detention Scrutiny Panel (CDSP)?

A Custody Detention Scrutiny Panel (CDSP) is made up of a group of local people selected from across the policing area, to represent the local communities in conversations with police officers and staff actively involved in the detention and custody environments.

A CDSP will be given unprecedented access to material retained by the police in order to objectively and independently review matters of disproportionality and police/detainee behaviour in the context of legislation, guidance, policy and procedure.

A CDSP will produce regular reports that will be made available to the wider public in order to help improve trust and confidence in policing.

3 What will Police Detention Scrutiny Panels do?

The proportionate, lawful, appropriate and necessary implementation of police detention and custody procedures is fundamental to the trust and confidence in policing.

CDSPs will provide a safe environment for the transparent objective assessments of police treatment of a detained person in the unique police detention environment.

A CDSP will:

¹For example, the Independent Strip Search Scrutiny Panel (ISSSP) for Norfolk & Suffolk police.

- Examine disproportionality in the application of police powers, notably on grounds of race/protected characteristics;
- Ensure partnership review and scrutiny of police detention procedures from start to finish, including appropriate use of custody data;
- Consider wider issues where the Panel feels it could add value e.g. issues of safety and dignity;
- Build trust and confidence with ethnic minority communities through transparency, accountability, engagement, and understanding of Criminal Justice and custody processes;
- Make observations and recommendations to PCCs and Chief Officers;
- Report back to the wider policing area in the form of a public facing annual report covering the findings of the CDSP in the preceding year.

The proposed scope of the CDSP is presented at section 6 - Panel Scope

4 Governance

PCCs and Chief Constables will need to agree local governance processes. It is recommended that Scrutiny Panels should work within the framework provided by the Centre for Public Scrutiny² and that they adopt common output measures to assist evaluation at both national and local levels, reflecting College of Policing guidance.

It is suggested that existing current governance structures are utilised where possible where they may provide an effective foundation for scrutiny, but consideration of additional support arrangements may be required.

For example, it is proposed that the following processes may be necessary:

- Recruitment process for Panel members;
- Acceptance criteria for Panel members;
- Training for Panel members;
- Tenure and retention protocols;
- Expense arrangements for attendance at Panels;
- Assessment of existing / extended remits of other projects/groups;
- Feedback / reporting arrangements;

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800048/Statutory_Guidance_on_Overview_and_Scrutiny_in_Local_and_Combined_Authorities.pdf

There are a number of regulatory requirements, inspection processes and legislation that the Panel will need to be cognisant of (for example HMICFRS inspections, case law). Subject matter experts should be on hand to supply relevant supporting information without becoming drawn into the Panel's discussion.

A Home Office Annual Data Return (ADR) is now requested from police forces for custody measures. This should be made available to the Panel by the force to enable informed scrutiny. In addition, executive summaries of relevant reports and strategies, along with their recommendations should be provided as part of the training necessary for members to appreciate the current dynamics between communities and the police.

Panels should be supported by persons informed and experienced in vulnerability and disability, ensuring constructive engagement with relevant partner agencies and informed assessment of HMICFRS criteria for treatment of and conditions for detainees in police custody³.

5 Panel Membership

It is for PCCs and Chief Officers to determine the scale and structure of Panel membership, however the following approaches can be adopted in support of transparency and public confidence:

1. Each Panel should elect an independent permanent or rotating chair;
2. The chair should be supported with relevant training, to ensure the Panel operates effectively and appropriately;
3. Members of the Panel should reflect the demographics of the policing area they serve with specific reference to racial representation;
4. Consideration should be given to training provision for Panellists, such as training on trauma informed practices and confirmation bias, to enhance the credibility of the independent review and scrutiny process;
5. Panel members must behave in a way that is respectful and inclusive to create a safe space for Panellists from a wide range of diverse backgrounds, and that appropriate care is taken to hear and empower their voices;

³ <https://www.justiceinspectorates.gov.uk/hmicfrs/publication-html/expectations-for-police-custody-version-4/>

6. It is proposed that all members commit to supporting a Panel for a minimum of 2 years in order to provide stability and consistency in the on-going review process.
7. Consideration should be given as to how a Panel will include prospective external invitees, such as those with lived experience;
8. If a concern is raised about a person or chair, the matter should be escalated through an agreed local governance process through the PCCs office. This may include issues concerning attendance, membership, behaviour or response to requests for information.
9. Where a vetting matter precludes involvement in the Panel, the responsible Chief Officer should consider whether the reason for their failure prevents them from being a member. The Chief Officer and PCC should agree on whether to accept or refuse the application to join the Panel and record their reasons for doing so;
10. It is suggested that Panel membership may include:
 - i. Statutory/established scrutineers (PCCs, ICVs, IAGs);
 - ii. Subject matter experts (defence solicitors/appropriate adults/health care professionals);
 - iii. Policing area representatives with lived experience of custody and/or disproportionality;
 - iv. Policing area leaders/advocates;
 - v. Police/staff association representation (e.g. diversity lead).
11. The Head of Custody should be a member of the Panel but should withdraw from any case review session to ensure that the Panel can deliberate and scrutinise freely, returning to the Panel to pick up the feedback and actions. It is important that the Head of Custody hears feedback first-hand from the panel to allow them to understand that context and emphasis as well as to clear up any ambiguity.
12. If the Panel Chair deems a matter to be of significant concern, they may choose to escalate any issue to the responsible Chief Officer for Custody.
13. Consideration may be given for a senior police officer to represent the wider Force interests at the Panel, having a role discreet from the Head of Custody in order to guide and support the Panel with regard to wider policing practice and policy. Any police representative at the Panel should withdraw from any case review session, returning afterwards to pick up the feedback and actions;

14. Panel members should sign non-disclosure agreements to protect the information supplied that is under review. All efforts will be made to anonymise the data considered by the Panel. This is to ensure compliance with GDPR and Data Protection;
15. Forces and PCCs are encouraged to engage with partner agencies who work with people with lived experience of custody (e.g. diversion schemes, Youth Offending Teams) and explore opportunities to involve those with lived experience of detention to contribute to the work of the Panel;
16. Any young or vulnerable person attending the Panel should be supported by an advocate who can guide their understanding and communication;
17. The value of 'lived experience' or direct feedback often exceeds that reported or presented via a third party. PCCs and Chief Officers are encouraged to identify the most appropriate mechanism to achieve this in order to build trust and transparency. Remote video or controlled attendance may be considered.

6 Panel Scope

The Independent Advisory Panel on Deaths in Custody (IAPDC) report notes that 'PCCs should lead local scrutiny Panels and expand their focus to include the examination of data relating to custody performance. These Panels could focus on data relating to disproportionality, as well as mental health and substance misuse prevalence.'

In order for any review to be credible, the CDSP should be able to request access to any documentation, footage or appropriate material held in relation to any concluded detention event that might contribute to the consideration of disproportionality. It will be for the PCC/Chief Officers to determine how the Panel tables any such requests.

The focus of these Panels should be shaped by either local or national data or policing area concerns raised that might point to evidence of any form of disproportionality (in particular, racial disproportionality) within the police detention environment. Requests made by a Panel to examine such material should be reasonable and complement its purpose – that to examine disproportionality in police detention and custodial environments. Thematically, topics might include (but are not limited to):

- strip searches;
- remand profiles (as opposed to bail);
- use of force (it is acknowledged that forces may have existing processes to scrutinise use of force generally);
- dignity and respect;

- length of detention;
- access to services (e.g. language service provision; Autistic Spectrum Disorder support);
- mental health (eg following recommendations from IABDC or other review)'
- use of anti-rip suits;
- other topics at the request of the Panel.

7 Material selection principles

1. An agreed set of principles governing both the proportionate request and production of case material needs to be established by PCC/Chief Officers and accepted by the members of the Panel.
2. There should be an identified police lead to act as the single point of contact for material requests and disclosure.
3. An escalation process will need to be defined where the request for material is declined by the single point of contact.
4. Panels should only scrutinise cases **retrospectively**. The feedback from the Panel will not change the original decision unless the police force considers the decision to be unlawful and/or unsafe.
5. Case selection can be random, supported by an open and transparent framework to be determined by the PCC/Chief Officer.
6. Panels should be able to review a particular case(s) that has generated particular public interest. This may include selection by specific offence types dependent on issues which are relevant to a geographic region. Relevant data specific to each force may be used to determine this.
7. Forces may wish to consult their Professional Standards departments about review requests that have resulted in complaints. It is recognised that a review of complaints may assist in delivering the Panel's objectives, but this is to be considered according to the circumstances of any complaint and force protocols.
8. If Panel members have any awareness or involvement in the subject matter discussed at the CDSP, **they should declare a conflict of interest and remove themselves from that element of the meeting**. Members should flag any such issues that they become aware of, to either the Panel Chair or PCC's office.

9. Where any material is reproduced digitally and disclosed (eg. video footage from CCTV or BWV), the necessary data sharing and information security measures with reference to the relevant legislation will need to be put in place. The Information Asset Owner for each force will need to be satisfied that the force is willing to accept any risks associated with sharing the products necessary for scrutiny to take place.
10. A service level agreement may be required to assist the Panel, and those responsible for producing its material, to ensure that sufficient time is made available for production and scrutiny. It may be possible to circulate some material to Panel members in advance of the session (including whatever steps are necessary to assure against inappropriate disclosure of personal information).
11. The police will provide the material to be presented at the Panel.

8 Operating Principles

1. It is suggested that a quarterly meeting frequency might be appropriate.
2. The PCC and Chief Officer will determine the most appropriate location for the Panel to meet, sensitive to the nature of the content to be discussed and the independent status of the Panel (this could include a council building, for example).
3. Attendance at Panels via remote connectivity could be facilitated. In-person meetings have the advantage of building relationships between Panellists, and mitigating any risks associated with sharing video footage remotely. Conversely remote connectivity may be preferred by some Panellists and alleviate any risks associated with physical security. This will be a matter for local determination and governed by appropriate protocols/risk assessments.
4. Personal data contained in written case reviews should be subject to the same data sharing considerations as video data including any steps taken to remove personal details. It is important that any such redaction process has the trust and confidence of the Panel, so needs to be clear, transparent and limited to personal data alone.
5. If there is fundamental disagreement between any parties about the interpretation of a Panel's findings, the matter must be escalated for resolution through an internal governance process overseen by the PCC's office. This local process may include mechanisms by which the Panel should consider other material and report further.

6. The data/material produced by the police for the purposes of review and scrutiny remains under the ownership of the police. Forces will therefore remain responsible for its production, display and storage and should comply with local data governance protocols.
7. An appointed person will take minutes/agreed actions.

9 Outputs

1. It is recommended that a Panel's findings should be recorded on approved feedback forms.
2. PCCs/Chief Officers must establish a reporting format in line with governing policies and procedures. The format must ensure that a Panel's findings can be acted upon at the appropriate level, empowering Heads of Custody or PCC's offices to direct immediate steps such as providing feedback to staff. This will also facilitate a structure for wider learning within the custody environment, and for escalating matters to force or national policy via suitable pathways.

In doing so, it is expected that PCCs and Chief Officers will be mindful of (but not limited to) the following themes:

- disproportionality (by way of race or other protective characteristic)
 - safeguarding;
 - breaches of professional standards;
 - feedback & learning;
 - need for training;
 - NPCC/APPC escalation;
 - other agency learning;
 - mental health.
3. Summary findings of the Panel's scrutiny should be shared with the wider policing area, for example through social media, external facing websites and other local policing area outlets as determined by the PCC and Force, demonstrating transparency of the scrutiny process and the Panel's findings.
 4. It is suggested that CDSP summary reports are shared appropriately with other review bodies such as any Independent Advisory Group (IAG), Stop/Search scrutiny Panel or Independent Custody Visitor (ICV) schemes. This offers the opportunity to cross reference and contextualise any similarities or differences in the findings of the various groups and could add both value and perspective to matters under review.

Further, it may consolidate evidence supporting or negating the need for further investigation into matters by the Force.

5. Representatives of the Force/PCC's office must report back to the Panel on steps undertaken following any recommendations made.
6. Forces should maintain auditable records of Panel data, findings and other materials generated from the Panels, subject to local storage and data retention requirements.
7. Any output generated from a CDSP needs to clearly state that it has been derived through collaborative working arrangements across a range of independent Panel members in conjunction with key stakeholders and should include references to them accordingly.