



Home Office

# Code of Practice on Independent Custody Visiting

March 2013

# **Code of Practice on Independent Custody Visiting**

Presented to Parliament pursuant to Section 51(8) of the  
Police Reform Act 2002

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## Introduction

1. This Code of Practice on independent custody visiting is issued in accordance with section 51 of the Police Reform Act 2002, as amended by section 117 of the Coroners and Justice Act 2009 and paragraph 299 of Schedule 16 to the Police Reform and Social Responsibility Act 2011. Local policing bodies and independent custody visitors (ICVs) shall have regard to the Code in carrying out their relevant functions. Throughout this Code, the term ‘police and crime commissioners’ includes the Mayor’s Office for Policing and Crime (MOPAC) (in respect of the Metropolitan Police Service) and the Court of Common Council of the City of London Corporation (in respect of the City of London Police).
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. It offers protections and confidentiality to detainees and the police and reassurance to the community at large.
3. The Coroners and Justice Act 2009 extends independent custody visitors’ remit to terrorist suspects in detention. This Code of Practice has been amended to set out how this would operate in practice - given the differences 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 supported by more detailed National Standards, which expand on the relevant procedures and systems and set out established good practice.

## Legislation

5. Section 51 of the Police Reform Act 2002 (as amended) requires Police and Crime Commissioners in England and Wales 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 and provision of a Code of Practice.
6. Section 117 of the Coroners and Justice Act 2009 introduces two changes to legislation which are intended to strengthen the independent monitoring of the detention and treatment of suspected terrorist detainees. These two changes amend:
  - (a) Section 51 of the Police Reform Act 2002 to ensure that the arrangements made by PCCs for ICVs include a requirement that reports about visits made to suspected terrorist detainees are submitted to the Independent Reviewer of Terrorism Legislation (IRTL) as well as to the PCC. 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 66-72 for further information).
  - (b) Section 36 of the Terrorism Act 2006 (review of terrorism legislation) under which the IRTL is appointed and tasked with the annual review of the operation of the Terrorism Act 2000 (TACT) and the Terrorism Act 2006, Part 1. As amended, that provision states that the IRTL may in particular consider the treatment of terrorist suspects detained under a warrant of further detention under Schedule 8 to TACT.

7. While the provisions of the Police Reform Act 2002 cover only England and Wales, the remit of the IRTL covers the entire UK. Therefore, in this regard his remit to examine compliance with Schedule 8 and the relevant PACE (and PACE NI) Codes cover Great Britain and Northern Ireland and similarly to review the operation of equivalent terrorism legislation in Scotland. This Code of Practice applies to England and Wales only. However, in order for the IRTL to fulfil his duties under section 117, equivalent arrangements will be put in place in Northern Ireland and Scotland to ensure a consistent approach is taken throughout the UK.

## Organisation and Infrastructure

8. Section 51(1) of the Police Reform Act 2002 places the responsibility for organising and overseeing the delivery of independent custody visiting with PCCs, in consultation with chief officers. PCCs must therefore ensure that they have in place robust and effective procedures for establishing and maintaining their independent custody visiting schemes, including the allocation of appropriate resources to this function.
9. Overall responsibility for the central administration of the scheme must be given to a nominated officer on the PCC staff, supported as necessary by other personnel and resources.
10. At police area level, groups or panels of volunteers must be organised to visit police stations in the area. Every group needs to have its own co-ordinator locally, supported by the PCC's staff. Paragraphs 23-24 below explain the arrangements for ICVs who are accredited to visit TACT detainees.

## Recruitment and Conditions of Service

### Organising Recruitment

11. PCCs are 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 23-24 explain the arrangements for ICVs who are accredited to visit TACT detainees.

### The Recruitment Process

13. Recruitment must be based on clear role descriptions, as well as person specifications setting out the qualities ICVs require to carry out their role effectively.
14. Recruitment must be open, non-discriminatory and well publicised.
15. All selections must be made on the basis of a standard application form with adjustments based on local circumstances.
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 custody visitors to an appropriate level as determined by the Home Office.

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 37-38 for details of the training). Before renewing the appointment of an individual ICV, PCCs must ensure that appropriate vetting or security clearance remains valid until the end of the period of appointment (see paragraph 29 below).

17. All ICVs must be at least 18 years old and must be living or working within the police area, having been resident in the UK for at least 3 years prior to the date of application. ICVs accredited to visit TACT detainees will need to have completed the I training and is a condition of selection for this role. ICVs must have successfully completed 18 months of PACE custody visits before they can be considered for TACT detainee visits. Paragraphs 37-38 provide more detail on the training for these roles.

## Who should be selected?

18. The PCC must seek to ensure that the overall panel 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. Visitors 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 chief officer should provide advice to enable the PCC to make a decision with regard to the suitability of each applicant. The PCC should be informed by the chief officer as to the reason(s) for recommending that a volunteer should not be appointed. Ultimately, the PCC 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 PCC staff will be unsuitable for that reason. The same will apply to special constables, justices of the peace, members of police and crime panels or PCCs. All applications must be considered on their merit.

## ICVs visiting TACT detainees

23. The selection of ICVs for TACT detainee visits will draw on the existing structures whereby ICVs are associated with schemes administered by individual PCCs and carry out visits only in that police area.
24. ICVs for TACT detainee visits will be drawn from those areas where terrorism detention takes place.

## Other Possible Roles for Custody Visitors

25. ICVs may also act as appropriate adults. However, individuals must not switch between those roles during the course of a visit to the same police station and must declare if they have previously carried out either role with the same detainee. An individual cannot perform both roles (i.e. acting as an appropriate adult and an ICV) simultaneously for the same detainee.
26. ICVs may also act as lay observers appointed under section 81 of the Criminal Justice Act 1991 to inspect the conditions under which prisoners are transported and held.

## Basis of Service

27. The PCC must provide each ICV with a written memorandum of understanding summarising their agreed responsibilities and the legitimate expectations of both parties.
28. The PCC must provide each ICV with an identity pass as their authority to visit any police station in the force area that is holding detainees on a regular or temporary basis.

## Tenure

29. Appointments as an ICV must initially be for three years and must not be confirmed until a six-month probationary period has been satisfactorily completed. Full re-assessments 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 job effectively. Any decision not to renew the appointment must follow the principles of natural justice and must be publicised in the scheme's memorandum of understanding or guidance. There are additional training and selection requirements for TACT ICVs as set out in paragraphs 37-38.

## Removal

30. A PCC can terminate an ICV's appointment because of misconduct or poor performance.
31. Procedures for considering possible termination of appointment must follow the principles of natural justice and must be publicised.

## Complaints Procedures

32. Procedures must be in place to deal with complaints against ICVs by detainees, police personnel or others. Equally, there must also be a clear mechanism for handling any complaints from visitors.

## Payment

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

## Insurance

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

## Training

35. The basic responsibility for initial and ongoing training lies with the PCC and a structured plan with clear objectives must be developed in consultation with the police service and the local independent custody visiting community.
36. The PCC 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

37. The Independent Custody Visiting Association (ICVA), 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.
38. Training for ICVs visiting suspected TACT detainees is part of the selection process, and successful completion of training is a condition of selection for this role. ICVs must have successfully completed eighteen months of PACE custody visits before they can be considered for TACT detainee visits. Selection, performance management and de-selection of ICVs is the responsibility of the relevant PCC.

## Frequency and Coverage

39. The PCC should liaise with the chief officer about the frequency with which visits should be carried out.
40. 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.
41. The frequency of visits must be monitored against expectations and reported to the PCC at regular intervals. Where insufficient visits are taking place, the causes must be investigated and corrective action taken.
42. Consideration must be given to making visits to all police stations where detainees are held even where they are only accommodated for relatively short periods of time.

## Visiting TACT detainees

43. In respect of PACE 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 terrorism detention suites, but given the low number of TACT arrests in comparison to PACE 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 relevant ICV scheme administrator will be notified when terrorist arrests take place and where those arrested are being detained.
44. This notification will be made by the police custody officer as soon as practicable after the detainee has arrived at the detention suite.



45. The ICV scheme administrator will inform appropriately trained and security cleared ICVs that an individual has been arrested under TACT and of the detention facility at which they are, or will be, held.
46. One of the nominated ICVs will make contact with the police custody detention suite to inform them of their intention to visit. 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 51(4)(a) of the Police Reform Act 2002 and in paragraphs 49 and 55 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 suspects to be “booked in”. This ensures that suspects 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.
47. 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 (see paragraphs 64 and 72).

## Working arrangements

### Conducting visits

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

### Visiting Procedures at Stations

49. ICVs must be admitted to the custody area immediately. Delay is only permitted when immediate access may place the visitors or another individual within the custody area in danger. A full explanation must be given to the visitors as to why access is being delayed and that explanation must be recorded by the visitors in their report.
50. 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. Custody visitors will be allowed access to CCTV cameras and systems (in PACE detention facilities) to ensure that they are operational.
51. Police 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.
52. The custody officer or a member of custody staff must accompany ICVs during visits (subject to paragraph 58).

## Access to Detainees

53. 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 either by:
- i) self-introduction – the ICVs will introduce themselves and their purpose and seek permission to speak to the detainee
  - ii) the escorting officer explaining the purpose of the ICV visit and asking the detainee whether they are willing to speak with the visitors.
54. Juveniles may be spoken to with their own consent. 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 55 apply.
55. In accordance with section 51(4) of the Police Reform Act 2002, the custody officer may limit or deny ICVs access to a specific detainee only if authorised by an officer of, or above, the rank of Inspector and where either of the following specified grounds apply:
- i) after a risk assessment has been carried out the officer reasonably believes that to be necessary for the visitors' safety, or
  - ii) if the officer reasonably believes that such access could interfere with the process of justice.
56. Where any of the circumstances referred to in paragraph 55 apply, consideration should be given to allowing the visitors 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 delay under the specified ground at paragraph 55 would not prevent the ICVs from inspecting the rest of the detention facility.
57. 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

58. Discussions between detainees and ICVs must, wherever practicable, take place in the sight, but out of the hearing, of the escorting police officer. Where this is not possible, the police officer will not take any active part in the conversation. Police officers should not actively listen to conversations between ICVs and detainees. For TACT detainees, discussions may take place in either the interview room, the solicitor's consulting room or some other convenient place.
59. Discussions must focus on checking whether detainees have been offered their rights and entitlements under PACE, their health and wellbeing, and the relevant safer detention guidelines and confirming whether the conditions of detention are adequate.
60. 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 visitor 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.

61. If an ICV realises they know or are known by a detainee, they must declare this and consider whether to withdraw from the visit.
62. 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.
63. 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 custody staff.
64. Subject to obtaining the detainee's consent to examine their custody record, the ICVs should 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.
65. 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**

66. 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:
  - a) at the request of the detainee; or
  - b) 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 and follow the complaints procedures set out in the PCC arrangements.
  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 69) 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 68 (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 the 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 visitors 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 visitors and police staff develop and maintain professional working relationships based on mutual respect and understanding of each others' 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 must remain at the station for the attention of the officer in charge. Copies must go to the PCC and other parties as determined locally.
78. Report forms must include an undertaking not to reveal the names 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 PCC for both the police station where the suspect was held and also the police area in which the arrest was made. Co-ordination of reports will be done via the PCC and the ICV Scheme Administrator.

## Feedback

80. Systems must be in place to ensure that the output from visits is drawn rapidly to the attention of those in a position to make the appropriate response.

81. The PCC is responsible for drawing together issues and identifying trends emerging from visits in their area and addressing these with relevant police supervisors.

82. The PCC must have a regular and formal opportunity to raise concerns and issues with a designated senior officer with force-wide responsibilities. It will usually be appropriate for that officer to be of at least Assistant Chief Constable/Commander rank. Regular reports shall be provided by the administrator of the scheme to the PCC. These reports must be discussed at PCC meetings as appropriate and reflected in an entry about independent custody visiting in the PCC's own annual report.

83. In addition, for TACT detainees the IRTL may choose to follow up issues separately.

## Sharing Experience

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

## Reviewing Performance

85. PCCs 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 National Standards, 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 visitors.

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