

DIGNITY IN CUSTODY MEANS DIGNITY FOR ALL. PERIOD.

Sanitary Custody: Independent Custody Visiting Association calls for access to adequate sanitary protection in the cells.

Introduction

1. On 4 January 2018, the Independent Custody Visiting Association (ICVA) wrote to the Home Secretary and the Minister for Women and Equalities to ask that urgent action be taken to protect the dignity of women and girls having their period in police custody.
2. The ICVA is a Home Office and Police and Crime Commissioner (PCC) funded organisation which leads, supports and represents PCC-led visitor schemes designed to check on the rights, entitlements, wellbeing and dignity of detainees and which work to hold Chief Constables to account. It forms part of the UK National Preventive Mechanism (UKNPM) required by the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), designed to strengthen the protection of people deprived of their liberty.
3. The ICVA is uniquely well placed to work with Ministers to secure effective protection for the rights of women and girls in police custody.

The problem

4. In 2017, ICVA highlighted in the press the experience of a woman observed by visitors in a police cell stripped and dressed in a paper suit. Her underwear had been removed although she had her period. A Visitor asked that she be given underwear in order that she could have some sanitary protection. This was refused.
5. Inspection reports suggest that this is not an isolated incident, and that there is poor practice in forces across England and Wales in the treatment of women and girls experiencing their period in the cells:
 - a. Few forces appear to consistently apply College of Policing guidance which requires women detainees be offered a hygiene pack without asking.
 - b. Little privacy is offered for the changing of sanitary protection, nor hygienic facilities for washing always made available.

- c. A failure of some forces to pixelate CCTV observation of toilet facilities in the cells has been roundly criticised.
 - d. Women are strip-searched and have their clothing removed by officers who are provided with no statutory guidance on how to treat women experiencing their period.
6. In September 2017, our Chief Operating Officer, Sherry Ralph summarised the problem of *Sanitary Custody*:

“Custody suites typically only have one absorbency of tampon and towel available, and a limited supply thereof. One senior officer described the packs that they have to buy as “woeful”. This means that, more often than not, a female detainee could have something that wasn’t absorbent enough, was uncomfortable, or wasn’t able to change the sanitary wear as often as they might wish to do so. [...]

Ok, so assuming we have had a female staff member booking us in, and the sanitary wear given is appropriate for need, hurrah! Sadly no, we’re not done yet people! There are more issues yet to go before you have full dignity in custody when menstruating.

*Do I think that it’s so important an issue for the dignity of women in custody that we **all** need to overcome any awkwardness and talk openly about the issue until sanitary protection in custody is varied and freely available? Yes, yes, I really do.”*

The rights of women

7. Fuller information is provided in a Legal Opinion by Caoilfhionn Gallagher QC and Angela Patrick, of Doughty Street Chambers, prepared for ICVA, provided to the Home Secretary and Minister for Equalities, and published on 4 January 2018.
8. The Legal Opinion explains in detail why there are grave concerns about the legality of the current situation. In particular, Caoilfhionn Gallagher QC and Angela Patrick conclude that:
- a. Women and girls who are detained in the conditions described by ICVA and in the inspection reports are likely to experience a breach of their rights protected by the Human Rights Act 1998. In all of these cases there is likely to be a breach of Article 8 of the European Convention on Human Rights (ECHR), the right to private and family life. The lawyers also conclude that there is likely to be a breach of Article 14 ECHR, the right to freedom from discrimination. In certain cases, there may even be a breach of the right to freedom from inhuman and degrading treatment, protected by Article 3 ECHR.
 - b. The rights of women and girls to dignity and to be provided with appropriate sanitary protection during their period is also provided for in international standards, including the United Nations Rules for the Treatment of Women Prisoners and Non-custodial

Measures for Women Offenders ('the *Bangkok Rules*') (2010) and the CPT *Standards on Women Deprived of their Liberty* (2000).

- c. Code C to the Police and Criminal Evidence Act 1984 provides a statutory code of practice on the treatment of detainees. It provides no specific information on the treatment of women, but it does require regard to be given to non-statutory guidance prepared by the College of Policing, in the *Detention and Custody Authorised Professional Practice* (APP), which requires that detainees should be "*clean and comfortable in custody*" and that risk should be balanced with the need to treat detainees with dignity. It recommends that a "*different and distinct*" approach may be required for women detainees and requires that hygiene packs should be routinely offered to women during the booking-in process and available on request thereafter. It requires officers to consider access to female officers for female detainees, the physical and medical needs of women and the need for women to have access to adequate replacement clothing as necessary.
- d. These standards are reflected in many local police policies. Yet, inspections show that women are being routinely let down. In so far as police forces are failing to follow their *own non-statutory guidance*, they remain subject to ordinary public law challenge by individual women detainees who are treated without dignity during their time in custody.
- e. Finally, all individual forces and the Secretary of State remain bound by the public sector equality duty (PSED) in Section 149, Equality Act 2010. This includes a general duty to have due regard to the need to eliminate unlawful discrimination and promote equality. The Legal Opinion expresses concern that the PSED is not being complied with.

What now?

9. ICVA believes that a few steps by the Home Secretary, supported by Parliament, could improve practice across England and Wales, protecting the right of everyone to equal, dignified treatment in custody:
 - a. We invite the Home Secretary – together with the Minister for Women and Equalities – to undertake a review of existing practice and the statutory and non-statutory guidance offered to individual forces, consistent with the PSED.
 - b. We ask the Home Secretary to amend PACE Code C to include clear guidance on the treatment of women having their period. This statutory guidance should cover the booking in process and the treatment of women throughout their time in custody. Express guidance must be given on the treatment of menstruating women during strip search and the removal of clothing. Officers should be adequately trained and supported to implement full and clear guidance on period management in the cells.

- c. ICVA has proposed necessary and urgent changes which must be made by the Home Secretary and supported by Parliament.
- d. ICVA is ready to work with Ministers and individual officers to help protect the dignity of women and girls in the custody.
- e. We urge Parliamentarians to support ICVA's recommended changes to the statutory Code and to ensure the rights of women and girls are protected in practice, not only on paper.

Further information

ICVA would welcome the opportunity to provide additional briefing on request from Members of Parliament and the press. For further information, please contact:

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