



# THE INDEPENDENT CUSTODY VISITING ASSOCIATION

COVID 19 - A SIX MONTH REVIEW

# INTRODUCTION



**Independent custody visitors (ICVs) are local community members who make unannounced visits to police custody to check on the wellbeing, rights and entitlements of detainees and make recommendations to prevent future harm. ICVs report to Police and Crime Commissioners (PCCs) or Police Authorities who, in turn, use this information to hold the police to account. The Independent Custody Visiting Association (ICVA) leads, supports and represents these schemes.**

ICVA is a member of the UK National Preventive Mechanism where it represents ICV schemes from England and Wales and helps to deliver the UK's obligations under international human rights treaties.

Police custody had to continue whilst lockdown came into force and new public health measures were put in place. This had a significant impact on custody. Police forces faced the same external pressures as other essential services: staff shortages, risk of infection, implementing social distancing regulations and had to manage these alongside new processes such as Virtual Enabled Justice. The first six months of COVID19 saw rapid and frequent change and placed unprecedented pressure on police custody.

As with all areas of life, COVID19 affected independent custody visiting.

Whilst lockdown took hold, policing and custody continued, making rapid changes to incorporate public health requirements into the justice system.

With such massive change in such short periods of time, monitoring custody became both harder and more important. ICV schemes rose to the challenge.

**This report reflects the work of ICVs across the six months following lockdown on 24 March 2020.**

# ADAPTING INDEPENDENT CUSTODY VISITING

**Independent custody visiting takes place under the requirements of international UN protocols that recognise detained people are vulnerable and that regular, independent visits to places of detention can safeguard against abuse and prevent ill-treatment. The UN Subcommittee for Prevention of Torture quickly issued guidance noting that, whilst public health requirements would likely change preventive visiting, effective measures to prevent harm should continue.**

Organisations within the UK reacted quickly. ICVA worked with schemes to establish the principles that would govern independent custody visiting throughout the pandemic. Schemes balanced the need to 'do no harm' with the requirement to provide oversight of custody; schemes sought to do as much they could safely do.

The Home Office quickly gave ICVs the status of essential workers, meaning that they could continue to conduct their role and underlining its importance within the criminal justice system. The Home Office also allowed innovation outside of normal ways of working outlined in the Code of Practice that governs independent custody visiting, encouraging schemes to monitor as much as they safely could. ICVA implemented a leadership position that encouraged schemes to do "as much as they could safely do" before later stating that schemes should set up mechanisms to ensure that they could directly hear a detainee voice.



# ADAPTING INDEPENDENT CUSTODY VISITING - HOW SCHEMES RESPONDED

Independent custody visiting adapted and changed. Physical visits continued across a number of areas where ICVs could safely go into custody. Other areas placed greater emphasis on data, implementing custody record reviews which took a detailed look at detainee treatment through custody records. Some schemes initially focussed on feedback from staff in custody suites before implementing mechanisms to hear a detainee voice.



ICV schemes have an obligation to bring ICVs together to share findings. Scheme meetings quickly moved online and schemes ran training and meetings with police representatives this way. Some schemes implemented social activities, such as quizzes, to keep ICVs engaged and feeling valued.

As schemes adapted, they were able to bring in new ways of visiting and spoke to detainees through video chat technology or via phone calls.

In making these adaptations, ICV schemes were able to gain independent feedback and take measures to prevent harm.



# FEEDBACK



**ICVA represents the findings on ICV schemes to national bodies. The national response to COVID19 required frequent ongoing feedback. ICVA created a weekly, later moving to fortnightly, feedback survey for schemes to share their concerns and questions as well as its regular communications. ICV schemes provided a wealth of independent feedback across this period.**

risk staff able well engaged meet due telephone new CRRs  
visits process ICVs keep working difficult challenge  
involved training happy also changing feel physical visits

The UK comprises many police forces, often with several custody suites within police force areas.

Many ICV schemes sent feedback stating that custody continued to function and cope throughout this period of change, although this was not straightforward and often strained staff and infrastructure.

Schemes have sent in reports of praise and progress that should be recognised and commended.

The feedback that we receive will therefore vary by area. However, a number of thematic findings have become apparent, marking the challenges and successes in police custody.

## SCHEMES ARE PROUD OF:

ICVA asked schemes to share what they were proud of over these first six months and received some clear responses. Scheme managers are proud of their volunteers who have demonstrated commitment and resilience as well as adapting quickly to change.

They are proud that these quick adaptations to schemes have meant that oversight of custody has continued, often facilitated by technology. This has not been easy to achieve, and continues to present challenges, but schemes have persisted and prevailed.

review proud working detainees ways oversight ICVs managed issues  
virtual continue maintain visits Force custody also proud  
able volunteers physical visits adapted provided ICV

Scheme managers are also proud of their communication, both with volunteers, but also with contacts within the police who they have continued to report issue to and resolve them.





## EARLY DAYS OF THE PANDEMIC

**The early days of the pandemic and subsequent lockdown presented specific challenges to police custody as it had to implement new social distancing requirements in a short period of time. This created uncertainty and initial problems in custody suites.**



ICV schemes reported problems managing essential visitors to custody as there was initial uncertainty about police's responsibilities in maintaining health and safety and public health requirements.

A key feature of early reports were staff shortages resulting from staff self-isolating. This has eased somewhat across the pandemic, but schemes report that staff shortages and worries about resilience remain an ongoing challenge.

Schemes initially reported shortages of Personal Protective Equipment (PPE), sometimes meaning that police were not able to issue essential visitors with required equipment. The NPCC issued guidance to police forces prompting them to deliver parity of care to essential visitors and to issue them with PPE. This issue was resolved over time as PPE became more freely available to custody suites and new visiting arrangements were implemented.

The UK has varying custody estate with some custody suites able to deliver social distancing relatively simply whilst the layout and size of other suites makes social distancing difficult to achieve. ICV schemes reported how police adapted custody estate, putting up screens, adapting room layouts and marking distance on floors. Some feedback noted that some custody suites could not be adapted. Schemes reported that police custody had revised their cleaning regimes to reduce risk of infection to detainees, staff and visitors.

Schemes generally report good access to hygiene and ICVA were informed of detainees being provided hand gel or hand washing on arrival. ICVA also received feedback such as increased showers and enhanced care for child detainees. However, there were some challenges accessing appropriate hygiene. For example, some custody suites have sinks with time limits that restrict water use. Water was released for less than the 20 seconds recommended by public health regulations. Other schemes noted that individual soaps were not being provided to detainees.

**Custody has adapted over the initial six months of COVID19 and new processes to manage hygiene and social distancing have become embedded. A number of thematic challenges have since come to light.**

## VIDEO ENABLED JUSTICE / VIRTUAL COURTS

**Video Enabled Justice (VEJ) and virtual courts enable detainees to progress through the criminal justice system without leaving police custody. Detainees are able to attend court in a specific room within custody suites for video remand hearings (VRH) where they are either remanded to prison or released.**

The impact of VRH impacted detainees both directly and indirectly. Some schemes noted that remote communication can be very challenging for vulnerable detainees and there is continued concern on how well vulnerable detainees can engage with the process. However, most schemes did not feel that this was an issue.

Schemes also reported that VEJ meant that detainees were staying in police cells for longer periods of time when they otherwise would have moved to courts. We have received some reports that detainees have not been able to attend VRH until later in the day, too late for prisons to accept them, meaning an additional night in police custody. Police custody is designed for short stays. There are limited distractions that detainees can access, such as books, which have been further curtailed due to concerns on cleanliness and contamination. Some schemes have reported that this has caused detainees stress.

The clearest concern on VEJ is the additional pressure that it places on staffing within custody suites. The longer waits in custody for detainees placed additional demand on police custody staff who have to both manage the court process and care for detainees over this extended period. This additional strain is an ongoing challenge and is clearly an issue for both the police, who have to absorb the demand, and can present an indirect impact on detainees who are being cared for by staff under strain.

We have also received reports that custody suites have reached capacity and had to close due to the increased demand created by VEJ. In these instances, detainees have to travel further to attend an open custody suite. These can be significant distances. Finally, we have had some reports that schemes have not been able to conduct monitoring as staff have not had capacity to facilitate it, which is not acceptable.

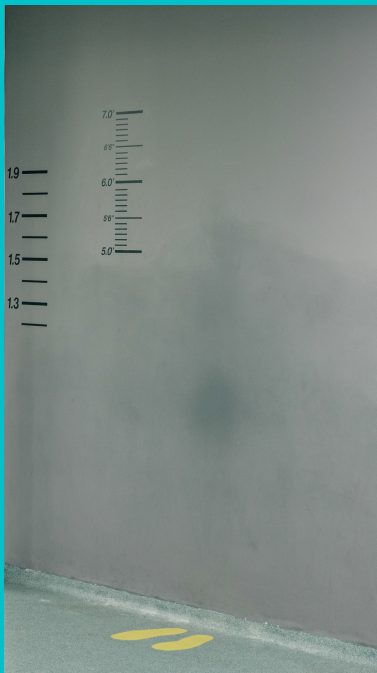


# ACCESS TO SOLICITORS

**Schemes provided reports that solicitors were reluctant to attend custody suites early in the pandemic. The National Police Chiefs' Council (NPCC), Crown Prosecution Service (CPS) and other agencies responded to this challenge by creating a protocol, outlining when interviews should occur and providing processes to enable solicitors to provide remote advice to detainees, either through video link or telephone.**

Whilst this process facilitated this valuable safeguard during a pandemic, it created some challenges.

As with VEJ, some schemes were concerned that detainees could find it difficult to engage with legal advice via remote communication. Others reported concerns that detainees were not accessing legal advice during interviews.



Perhaps the most significant concern schemes fed back questioned whether detainees were giving informed consent to receiving remote advice.

Detainees should be given the opportunity to consider whether remote or in-person advice is best for them and provide informed consent to remote advice where this occurs. Schemes questioned whether detainees were provided with this opportunity and reported concern that remote advice was presented to them a fait accompli.

As the pandemic has progressed, schemes have reported that more solicitors are attending custody in person. Some remain concerned that solicitors are not attending, although they report that appropriate social distancing measures are in place.

# APPROPRIATE ADULTS

**Appropriate Adults (AAs) are a valuable safeguard for children and vulnerable adults, helping them to understand and engage with the custody process. Where a detainee cannot access their own AA, such as a parent, police will request one through a local scheme. AAs continued to attend police custody throughout the pandemic.**

Periods of uncertainty and change are arguably when more oversight is required, not less. Of course, like so many other custody functions, how this oversight could be achieved would also require some innovation...

I am genuinely grateful to schemes that have adapted and innovated their practice and continue to do as much as they can. The reports and feedback have enabled us to evaluate the practical and 'grass roots' impact of the decisions we have made and the policies we have developed. We have been able to reassure ourselves where hygiene and PPE are being appropriately managed and to take action where this was not the case. We have been able to maintain our confidence that the welfare and rights of detainees are being protected."



NPCC Custody Lead DCC New Kemp

ICV schemes reported that some AAs were not able to attend custody suites during the pandemic. As a result of the reduced numbers of AAs attending custody suites, some areas reported long waits to access them. Other schemes adjusted the way that they delivered services, initially providing support over phone (for example for the first explanation of the detainee's rights and entitlement) before attending to repeat processes completed remotely and for essential procedures (for example, interviews) in person.



**ICVs visit detainees held under terrorism detention. Terrorism Act (commonly referred to as TACT) detention has different arrangements as ICVs must be alerted when a TACT detention takes place and visit more frequently. ICVs who visit TACT also report to the Independent Reviewer of Terrorism Legislation (IRTL), Jonathan Hall, who maintains oversight of terrorism detention.**

"I was able to see during the Pandemic that many visiting schemes demonstrated a superb adaptability in moving quickly to remote monitoring, and ensuring that there was no loss of oversight of TACT suites and TACT detainees".



Jonathan Hall QC, IRTL

Schemes with TACT detention implemented remote visiting as a matter of priority and ensured that ICVs were speaking to detainees, either via telephone or video conferencing. ICVA held additional support meetings with schemes and the IRTL over the pandemic in order to ensure that this crucial independent oversight continued.

## BLACK LIVES MATTER

**The killing of George Floyd in America led to worldwide protest and concerns about policing, racism and use of force. The concerns that sparked these protests are comparable to those outlined in the Lord Scarman report which, in turn, created independent custody visiting. ICV schemes have a duty to be representative of the communities they serve and should provide independent community oversight of a hidden area of policing.**



Police custody is often unseen and introducing community oversight brings transparency and, in turn, should increase community confidence that detainees are being treated fairly.

Katie Kempen, ICVA CEO

Many schemes have started specific responses to these protests – beginning work that will explore whether race impacts how detainees are treated. ICVA also reflected on our role and is working with the Criminal Justice Alliance (CJA) to research both the diversity of volunteers and how ICVs monitoring issues of race in custody. Further to this, we have supported schemes through re-sharing resources that support recruitment of diverse volunteers and develop volunteers' understanding of race and policing.

We will build on this further through additional training for schemes, in responding to the CJA report and strengthening our work.



# USING YOUR FEEDBACK

**ICVA quickly began collating feedback from schemes through a midweek survey, additional meetings and on the members' forum. We were able to share local feedback and national themes with the responsible national group.**

The Home Office quickly confirmed that ICVs were essential workers, facilitating travel across the tightest restrictions in lockdown, and allowing schemes to continue physical visits where possible and safe to do so. The Home Office established a regular operational partners' group where key organisations working in custody were able to communicate. Additionally, ICVA fed back specific local queries to the relevant national partners such as the NPCC or the Lay Observers.

Towards the start of the pandemic, ICVA shared feedback to inform processes and new ways of working. We were able to share feedback on access to PPE and staffing. Furthermore, we were able to advise the NPCC on guidance and information they were sharing with custody units across England and Wales.

ICVA worked with the Lay Observers to develop additional guidance for ICVs on virtual courts and has continually shared ICV feedback with the Home Office. ICVA further wrote to the Minister for Crime and Policing outlining ICV feedback and concerns. The Minister thanked ICVs for their on-the-ground insights and outlined measures planned to relieve the pressures that VEJ places on custody suites.

ICVA fed back concerns on access to solicitors and informed consent to the Home Office, NPCC and other partners. This instigated a suite of work to seek to redress the issue and strengthen processes to ensure that detainees were able to make an informed choice about the manner in which they receive legal advice.

Throughout the pandemic, ICVA has valued feedback and communication with schemes and has supported individual scheme managers with queries and feedback. Where needed, we have reissued guidance and support on key topics such as the role of the Appropriate Adult.

We have published regular summaries of scheme feedback, and shared these with key stakeholders, in order to maintain transparency and ensure that information is shared with the right bodies.

## LOOKING TO THE FUTURE

**We asked schemes what challenges remain in police custody. It's clear that ongoing uncertainty remains a concern in custody. Police forces are managing changes to guidance and restrictions on movement, including local lockdowns, that require changes to procedures.**

hearings continue challenges many staffing custody  
issues recording due

Schemes also report concerns on staffing levels in custody.

Schemes also note that issues on VEJ remain and need to be resolved. Furthermore, they note that challenges in ensuring that vulnerable detainees, such as children and those in poor mental health, are able to access the right services and support remain.



## RECOVERY

Schemes continue to work hard to monitor custody. As COVID19 has progressed, schemes have returned to physical visiting. However, this has not been straightforward and schemes have to juggle the needs and preferences of volunteers. This is all within a context of uncertainty and changing regulations on freedoms.

Scheme managers have shown an agile approach to monitoring custody, maintaining oversight of custody often through a hybrid approach that mixes different types of oversight and visiting. Schemes are worried about how to manage a safe return to custody for all ICVs. Independent custody visiting takes place under a 'do no harm' principle and schemes want to ensure that it is safe for each ICV to return to visits before they do so.

Many schemes have reported that they are finding it difficult to maintain oversight within current resources. Many volunteers are unable to visit custody and this has reduced the capacity of schemes. Moreover, some volunteers have now sadly left schemes. Many schemes are now considering recruiting more ICVs.

Schemes have increasingly relied on technology to communicate with their ICVs and this is likely to make an ongoing impact on schemes. Scheme managers have run online training and engagement activities to keep ICVs engaged and many have found that these are beneficial, particularly in large geographical areas where ICVs would otherwise have to travel long distances to attend meetings. The future of independent custody visiting is much more likely to rely on technology moving forward.



## CONCLUSION

ICVs have been the only independent monitor overseeing police custody for much of the first six months of COVID19. ICVs are volunteers who have demonstrated an admirable dedication to preserving human rights in the midst of an international crisis. ICVA is proud and grateful for the invaluable contribution that ICVs have made throughout this period of time, schemes should be rightly proud of what you have achieved.

"I would like to thank you, and Independent Custody Visitors up and down the country, for the vital work they do, and have continued to do throughout the pandemic, in maintaining standards and I welcome your on-the-ground insights about emerging issues."



**Kit Malthouse MP**  
**Minister of State (Minister for**  
**Crime and Policing)**

The feedback that ICVs delivered has instigated national work, guidance and policy change. ICVA has worked with national organisations including the NPCC to ensure that their independent feedback has shaped the police response to the pandemic. ICV feedback not only improves practice, it demonstrates an ongoing and high-level commitment to transparency and community scrutiny of police custody. All detainees are vulnerable by the very nature of their detention, but are much more so within the context of a pandemic. We are grateful to, and proud of, the volunteers who have worked so hard to safeguard their rights and ensure that fairness, integrity and openness have continued in police custody.