

Immigration Detainees in Police Custody

An ICV Briefing and Checklist

March 2023



Background

There are times when some people will be detained in police custody under immigration legislation rather than the Police and Criminal Evidence Act (PACE). There are some differences in terms of the rights and entitlements in the two cohorts of detainees, and this briefing seeks to explain the background, differences and provide a checklist for ICVs who visit this group of detainees.

Note: ICVs are able to visit any type of detainee held in police custody, subject to risk assessment.

Length of Detention for Immigration Detainees

The 'PACE clock' does not apply to those detained solely for immigration purposes.

There are some General Instructions for Detention on the government website, produced by the Home Office. On police custody specifically as a place of detention, the General Instructions¹ state on page 54:

*'People should preferably only spend one day in police cells, with a normal maximum of 2 days. In exceptional cases, a person may spend up to 5 days continuously in a police cell (7 days if removal directions have been set for within 48 hours of the fifth day) if, for instance, the person is awaiting transfer to more suitable Home Office or Prison Service accommodation **and** the police are content to maintain detention. Such detention must be authorised by an inspector or SEO, who must take into account the Home Office duty of care for detained individuals and the likelihood that police cells do not provide adequate facilities for this purpose in the long term'.*

Does any of PACE Apply?

PACE Code C² does have some notes on those who are detained in police custody under alternative powers. Code C states (the below is an excerpt of 1.12 for this briefing):

1.12 This Code does not apply to people in custody:

(ii) arrested under the Immigration and Asylum Act 1999, section 142(3) in order to have their fingerprints taken;

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/111468/3/Detention_General_instructions.pdf

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf

(iii) whose detention has been authorised under Schedules 2 or 3 to the Immigration Act 1971 or section 62 of the Nationality, Immigration and Asylum Act 2002;

The provisions on conditions of detention and treatment in sections 8 and 9 must be considered as the minimum standards of treatment for such detainees.

Rights and Entitlements

Therefore, as per PACE Code C - Sections 8 and 9 provisions will apply to immigration detainees. This means that this group should have access to:

- Food, water, showers, exercise, blankets and so on in the same way as all other detainees.
- All detainees should have access to a member of staff of the same gender as them and healthcare staff if required.

Detail on Appropriate Adults

ICV has sought clarification from the National Appropriate Adult Network and reviewed PACE with regards to AA provision and immigration detainees.

If a detainee is being detained under Immigration and is suspected of a criminal offence and they met the definition of vulnerability, they would be entitled to an AA whilst in police custody, with all of the safeguards that apply.

If a detainee is held solely for Immigration purposes, then they would not have access to an AA.

Detail on Legal Advice

Individuals detained in police custody under immigration powers have a new service to access legal advice, starting on 1 June 2022³.

The Immigration Police Station Advice (IPSA) service is replacing the Immigration Telephone Advice (ITA) service.

Detainees will be entitled to call-backs under the IPSA service to help them understand:

- what may happen next
- likely detention timescales
- how to access their nearest face to face immigration solicitor

Detainees will then have the option of contacting a solicitor for legal advice. They may decide to do that while still in detention or following release from police custody. If the

³ <https://www.gov.uk/government/news/civil-news-changes-to-immigration-advice-in-police-stations>

detainee has special needs, such as translation services, the operator will be aware of this in advance of the call-back. They will be able to arrange translation on the call.

If there is a criminal charge as well as the immigration detention issue, it is ICVA's understanding that the detainee would also be able to access a duty solicitor for legal advice on the criminal charge.

What can ICVs monitor?

- Has the detainee been proactively offered:
 - Food and drinks suitable for their dietary needs and religious requirements at regular intervals.
 - Access to toilets and washing facilities and exercise where practicable.
 - Access to medical attention for physical or mental health needs.
 - Menstrual care if applicable (detainees should be able to speak to a female officer about these needs in private).

- Are staff engaging well with detainees?
 - Are they speaking to detainees regularly, respectfully, in person and with cell doors open?

- Has the detainee been proactively offered:
 - Blankets if cells are cold.
 - Distraction items such as magazines, books, puzzles, foam footballs and so on.

Custody Records

Immigration Detainees will have a custody record, and subject to your normal rules on consent to view, ICVs may review the custody record and make note of treatment and conditions for detainees as per their entitlements.

Reporting Back

This will vary from scheme to scheme, but visits forms should be marked as those from visits to immigration detainees. This means that scheme managers can identify any trends or patterns of good treatment or requirements for improvement for this specific cohort.

Briefing Ends.