

Introduction

OPCAT mandates “The opportunity to have private interviews with the persons deprived of their liberty without witness” (Article 20 § D) which the code of practice has translated to the instruction that conversations must “take place in the sight, but out of the hearing, of the escorting police officer” (Code of Practice of Custody Visiting Point 58). ICVA has created this briefing following some ad-hoc queries regarding the confidentiality of visits and reports of issues with being able to have private conversations with detainees as outlined in the code. Below are some circumstances where privacy is not possible and what ICVs can do in those circumstances.

Please note, in regard to offence confidentiality, the following point from the Code of Practice of Custody Visiting: “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” (Code of Practice of Custody Visiting Point 60).

Constant Watch

Detainees under level 4 observations¹, constant watch, will be unable to be spoken to without an officer present.

What can ICVs do? Ask the detainee if they are happy to speak in front of staff, if not, seek consent to view the custody record. Of course, ICVs are also able to seek consent to view custody records after a full visit too. This may be helpful in ensuring the record matches the detainee’s description of their time in in custody.

Dry Cells

A dry cell is a cell used to hold a detained person who is identified as requiring forensic testing and/or examination. Detainees held in ‘dry cell’ conditions will be held in a cell with no immediate uncontrolled access to washing and toilet facilities. In some cases, the cell will be void of plumbing. In others, the cell will have a toilet, sink and tap that are isolated and forensically sealed eliminating the detainee’s access to water. The provisions of food and drinks will be closely supervised by a member of police staff who is able to intervene should the detainee attempt to destroy evidence. Access to toilet facilities is provided but away from the cell and under stringent close proximity supervision.²

What can ICVs do? Ask the detainee if they are happy to speak in front of staff, if not, seek consent to view the custody record.

¹ For more information on the different levels of observation please view our bitesize training on [Observations, Reviews and Rousals](#).

² With thanks to Hampshire and Isle of Wight constabulary for their input on this definition.

Being Recorded

Signs should be displayed throughout custody letting detainees know they are being recorded. Further, the Code acknowledges that “Where [privacy] 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.” (Code of Practice point 58). Therefore, staff should not be actively listening to the recordings of the detainees’ discussions with ICVs and they should not take part in the conversation.

What can ICVs do? Ensure the detainee is aware they are being recorded and check to see if there are signs displaying the fact that they are. Ask the detainee if they are happy to speak while being recorded, if not, seek consent to view the custody record.

Briefing Ends.