

# **Custody services in a COVID-19 environment**

# Contents

<b>Introduction</b>	<b>1</b>
<b>Our methodology</b>	<b>2</b>
<b>Main findings</b>	<b>3</b>
<b>Recommendations</b>	<b>6</b>
<b>Diverting people from custody and minimising the time that detainees spend there</b>	<b>8</b>
<b>The strategic approach to managing custody services during the pandemic</b>	<b>14</b>
<b>Managing detainees' risks</b>	<b>17</b>
<b>Caring for detainees during the pandemic</b>	<b>20</b>
<b>Detainees' legal rights</b>	<b>22</b>
<b>Providing a safe custody environment for detainees, staff and visitors</b>	<b>26</b>
<b>Our conclusions</b>	<b>29</b>

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# Introduction

In March 2020, we suspended all inspection work requiring appreciable contributions from police forces, and fire and rescue services, so that they could focus on responding to the pandemic. In July, we announced our intention to inspect the police response to the pandemic. Our inspection took a snapshot of policing during the pandemic and looked at what happened from March to November 2020.

Our inspection assessed how policing:

- understood and prepared for the potential and actual impact of the pandemic;
- responded initially, and continues to respond, to the pandemic; and
- is evaluating its response to the pandemic, establishing what is and is not working and using this to shape how the police service operates.

Our report *Policing in the pandemic: The police response to the COVID-19 pandemic* was published in March 2021.

This report supplements the wider inspection with more detailed findings on how custody services operated in a COVID-19 environment. It aims to:

- increase the police service's national and local understanding of how custody services operate in a COVID-19 environment;
- show how services have been/are affected and how police forces are responding; and
- establish what improvements forces and the wider Criminal Justice System can make.

# Our methodology

We developed six lines of enquiry to help us assess how custody services have been/are affected by COVID-19, including how the police:

1. divert people from custody and minimise the time that detainees spend there;
2. manage custody services during the pandemic, looking in particular for a strategic approach;
3. manage detainees' risks;
4. care for detainees;
5. meet detainees' legal rights; and
6. provide a safe custody environment for detainees, staff and visitors.

We gathered evidence from a range of sources, working virtually whenever possible.

We used information from self-assessments and other documents provided by all 43 police forces in England and Wales. We carried out fieldwork in five forces: Gloucestershire Constabulary, Lancashire Constabulary, the Metropolitan Police Service, Norfolk Constabulary and South Wales Police. We gave each of the forces we inspected feedback to assist their continuing response.

Fieldwork included:

- case audits;
- interviews with strategic and operational lead officers;
- interviews with lead officers for the Independent Custody Visitor Schemes from the Offices of the Police and Crime Commissioner (OPCCs);
- focus groups with custody officers and frontline response officers; and
- a staff survey in four of the five forces.

The staff survey asked questions covering several topic areas. The responses helped us understand how staff felt custody services had been affected by COVID-19. Their views are reflected throughout this report.

This report presents what we found and were told. We make custody-specific recommendations and highlight areas for improvement for forces to consider.

# Main findings

In many ways, custody work carried on as usual when the pandemic began. The numbers of detainees entering custody varied from force to force. Overall, forces told us that the total numbers of detainees decreased (slightly) between April and August 2020 when compared with the same period in 2019, particularly for detained children.

There were fewer arrests during the first lockdown (April to May 2020) in the five fieldwork forces. After that, numbers returned to previous levels. The number of detainees with, or suspected of having, COVID-19 isn't known but was reported as low.

Forces anticipated staffing shortages and developed plans to manage demand for custody services. These plans mainly involved avoiding arrests to keep detainee numbers as low as possible. However, when staffing shortages did not materialise some forces took the opportunity to clear outstanding cases and arrest those wanted on warrants, who were easier to find during lockdown.

Forces found that they must manage demand for custody services more carefully than in pre-COVID-19 times. The virus demands that they:

- manage detainees' COVID-related risk;
- take on additional tasks arising from changes in the way detainees receive their legal rights; and
- continue to manage the risks, and care, for detainees who are spending longer in custody while waiting for virtual remand hearings.

Virtual remand hearings are generating significant extra costs for forces. Forces acted quickly to set up facilities so that detainees could access justice during the pandemic. Generally, the arrangements worked effectively. But forces told us they could not maintain this way of working, and that they were considering withdrawing virtual remand hearings.

We understand that most forces have withdrawn virtual remand hearings since our inspection, other than for detainees with, or suspected of having, COVID-19. We found little planning throughout the wider Criminal Justice System about how these arrangements – which have both advantages and disadvantages – can and should be managed in future.

Forces are managing COVID-related risks well, despite working in such confined environments. They have enhanced their approach to risk assessment to identify and manage detainees with, or suspected of having, COVID-19 to minimise the spread of

the virus. Where there are risks, forces try to keep the detainees as isolated as possible in the custody suite and look after them safely.

Most forces have some arrangement for releasing detainees identified at potential risk of having COVID-19 as safely as they can – usually by taking them home and telling them to self-isolate. However, if a detainee is released but not prepared to co-operate with any release arrangements (as police vehicles may not be immediately available and involve diverting officers from their main duties), the best a force can do is to provide a mask and advise them to return home and self-isolate. This is a concern, given the risk of them spreading the virus.

The provisions for caring for detainees and looking after their welfare needs are largely unchanged. Detainees' needs are met in the same way as before the pandemic, although additional arrangements have been made to do this safely. Support from mental health services to help frontline officers deal with people with mental ill health, both on the street and in custody, is largely maintained. However, some forces told us that demand from mental ill health is increasing. Some forces have reported improved joint working in response to the pandemic.

Forces have adopted the [temporary interview protocol](#) agreed by the National Police Chiefs' Council (NPCC), the Crown Prosecution Service (CPS), the Law Society, the Criminal Law Solicitors' Association (CLSA) and the London Criminal Courts Solicitors' Association (LCCSA), introducing changes to the way in which detainees exercise their rights to legal advice and representation by allowing this to be provided remotely. However, implementation of the protocol varied in the five fieldwork forces. It was not clear how detainees had been informed and made aware of changes to legal advice, or whether any consents about how their legal representation is provided were being recorded on the custody record.

The temporary interview protocol (and the Home Office proposed changes to the Police and Criminal Evidence (PACE) Codes of Guidance to incorporate the principles of the protocol into law) says that custody officers must satisfy themselves that the decision to use a video or a telephone link would not have a negative effect on a detainee's ability to communicate effectively with their solicitor. However, there are differences in understanding what this means in practice. Many custody officers felt that they had little influence over such decisions. We found scant evidence that inspectors considered them during PACE reviews. It is difficult to determine that decisions over how legal advice and representation is provided are being made in the best interests of detainees.

The use of pre-charge police bail has increased significantly. Some forces told us they struggle to obtain advice from the CPS on how they can investigate cases during the initial period of detention, and that they can only get charging decisions when they want to remand. This leaves them little choice but to release detainees on pre-charge bail. The changes allowing legal advice to be given virtually are leading to increased use of prepared statements, which is resulting in detainees being bailed to return for an interview. This use of bail delays detainees' access to justice.

To help safeguard victims, conditions are often required on detainees released on bail – especially those being investigated for domestic abuse offences. But if investigations can't be finished within bail periods, which is made more difficult by the rise in the

number of cases on bail, some suspects may have to be released under investigation without the conditions they were required to abide by while on bail.

Health and wellbeing in custody suites is a clear focus. Forces have invested, and continue to invest, in making custody suites as COVID-19 safe as possible for staff, detainees and visitors. Although custody officers have greater control over the movement of people in the custody suite, they remain concerned about their ability to socially distance from others. Other staff share this concern. Forces are trying their best to implement distancing measures in custody suites, but it is difficult to adhere to in practice and is impossible in some cases.

Forces aren't collecting enough of the right information to help them manage demand on custody services in a COVID-19 environment. At the time of our inspection, forces didn't know the number of detainees entering custody who had, or were suspected of having, the virus. Such data would help them plan how to look after these detainees safely. Forces would also benefit from understanding how much longer detainees spend in police custody because they are waiting for virtual remand hearings.

Forces don't know whether detainees receive their legal rights and representation through virtual means rather than having solicitors attend in person because they do always not record this information. Most forces' self-assessment estimated 'well over half', but without more accurate information it is difficult to show how the protocol is working in practice or to deal with any implications for the Criminal Justice System if its validity is challenged.

# Recommendations

We made the following custody-specific recommendation in our report, *Policing in the pandemic: The police response to the COVID-19 pandemic*:

Forces must immediately make sure that they record clearly and consistently on custody records information about how/when/if detainees are informed of the temporary changes to how they exercise their rights to legal advice and representation. The record must make clear how any consents are obtained about the way in which legal advice and representation are provided.

We also suggested the following action:

Forces should collect enough of the right information at the right level and detail about the continuing effects of the pandemic (costs, new/additional demand, absence, annual leave, custody and detainees etc) so they can resource their work appropriately.

In this report we make additional recommendations.

To help clarify the custody information that forces collect and use, we recommend that forces:

- track the numbers of detainees with, or suspected of having, COVID-19;
- record and monitor the length of time detainees remain in police custody, and any additional detention times due to waits for virtual remand hearings;
- record and monitor the way in which detainees receive their legal rights, and how many receive them by virtual means rather than a solicitor attending in person; and
- record the use of bail and released under investigation, and assess any increases in pre-charge bail.



We further recommend that:

- The police service should evaluate the advantages and disadvantages of using virtual remand hearings. It should use this information to help the wider Criminal Justice System learn from its experience and develop better working arrangements that meet the needs of justice and make best use of public money.
- The NPCC, working with the National Health Service (NHS), should consider how to minimise the risks of spreading the virus in the community when releasing detainees with, or suspected of having, COVID-19 and what arrangements can help achieve this.

# Diverting people from custody and minimising the time that detainees spend there

## Diverting people from custody

Overall, information from forces showed slightly fewer detainees entered police custody in England and Wales during April to August 2020 compared with the same period in 2019. However, it was not the significant reduction that some had anticipated.

The number of adult detainees fell by 1 percent overall. This varied between forces, with slightly over half reporting a decrease and the remainder an increase. The overall percentage of child detainees fell more sharply at 19 percent – all but 7 of 43 forces reported a decrease. Discussions with staff during our fieldwork suggested that the number of arrests dropped during the initial lockdown but then returned to pre-pandemic levels.

Forces recognise that managing the number of detainees entering custody is an important way of keeping custody services operating as effectively and safely as possible. It helps minimise the risk of viral transmission. Nearly all forces produced guidance following the principles in the national guidance. They encouraged frontline officers to arrest only when essential and to consider other options, such as fixed penalty notices or street bail, to avoid taking people into custody.

Forces adopted a range of practices aimed at reducing footfall. Arresting officers in our fieldwork forces often rang custody before making an arrest to discuss options and any more appropriate alternatives. Two forces have a 'ring before you bring' policy. Some have an inspector available to advise when there are COVID-related concerns and discuss whether custody is appropriate.

However, the frontline officers we spoke with were clear that if arrest is necessary, and the Code G necessity test is met, a person is arrested and taken to custody irrespective of COVID-19 factors. This is in line with the NPCC national guidance issued during the early stages of the pandemic.

Some forces chose initially to keep detainee numbers down by not actively pursuing any warrants for arrest or any outstanding investigations that could result in a detainee being brought into custody. However, forces took a less restrictive approach and started to clear outstanding cases when some of the anticipated staffing shortages (due to sickness or shielding) did not materialise and it seemed that few detainees with, or suspected of having, the virus were entering custody. The Metropolitan Police

Service took the opportunity of more people being at home during lockdown to locate and arrest outstanding suspects.

Our fieldwork showed that forces diverted children and vulnerable people away from custody, in line with existing force priorities. The data they provided shows a reduction in the number of children arrested. Officers suggested this was because there were fewer children on the street during lockdown. Note: Other than diverting from custody, we did not examine how COVID-19 affected the experiences of children entering custody. We included them in our overall assessment of detainee care and treatment.

We were told that the number of calls to deal with incidents involving people with mental ill health was increasing, along with detentions under Section 136 of the Mental Health Act 1983. Frontline officers felt that mental health professionals were available to support and advise in a similar way to before the pandemic, despite the wider pressures on the NHS.

Waiting times at health-based places of safety or hospital A&E departments were also reported to be similar to waiting times before the pandemic, although some frontline officers felt that they were increasing. Forces avoided using custody as a place of safety, although some said in their self-assessments that this had been necessary when health-based places could not be found (for the period 1 April–31 August 2020). It seems likely that incidents involving mental ill health will continue to rise. Meeting this demand will be increasingly difficult, both during and after the pandemic.

There is an understanding that some individuals may be at particular risk from the virus, such as older people and those from black and/or ethnic minority backgrounds. However, we were told that this doesn't influence the decision to arrest or authorise detention in custody. The breakdown by ethnicity of those entering custody during the pandemic shows reductions for all ethnic groups, but there were some differences between the groups when compared with the same period in 2019.

We do not know why some groups were affected more than others. Some forces had large numbers of detainees whose ethnic background was recorded as 'not stated', so it is not possible to draw conclusions. However, as the pandemic continues it will be important to monitor the breakdown of detainees by ethnicity to establish whether there are any differences or disparities between groups.

## **Keeping detention times to a minimum**

Most forces told us that COVID-19 has affected the length of time that detainees spend in custody. However, it is difficult to assess the full impact because many forces do not collect information to monitor detention times.

Our fieldwork showed that the virus has not significantly affected the average time detainees wait to be booked into custody. Officers told us that some additional processes, such as taking detainees to wash or sanitise their hands before attending the custody desk, added a little time. They also told us there could be waits of an hour or more, which they attributed to the need for custody to limit the number of detainees being booked in at the same time for social distancing reasons. The design of some custody suites means that only one detainee can attend the booking-in desk at a time.

The information gathered from forces' self-assessment submissions shows a similar picture with only small increases in waiting times, although there were variations between forces.

Not all forces could provide information about detention times following detainees being booked in. Some could provide information for pre-charge detention times but not post-charge; some only had overall detention times; and some did not give any information. From the information available, we can say that average pre-charge detention time increased by about 32 minutes and post-charge detention time increased by about two hours for the period 1 April 2020–31 August 2020 compared with the same period in 2019.

However, average pre-release detention times decreased by just under 22 minutes (this relates to detainees released under investigation, on bail or where no further action is to be taken). These average detention times varied between forces, with some reporting an increase and others a decrease. Most reported increases for post-charge detention times.

Although not all forces were able to provide information, 40 out of 43 indicated that detainees were being held longer in police custody because they were waiting for virtual remand hearings. We were consistently told, and given numerous examples, of detainees spending longer in police custody when they were charged and remanded for a court hearing.

Officers we spoke with said that detainees often had to wait until mid or late afternoon for their hearing, and some remained overnight because their case could not be heard that day. Mondays cause problems because of the additional demand from detainees arrested over the weekend. This could mean that someone arrested on a Saturday who missed the Saturday court could be held until the following Tuesday. We were given one example where an individual wanted on a warrant handed themselves in early in the morning, but ended up being held overnight and attending their virtual remand hearing the next day.

Detainees held in COVID-19 designated cells (that is, cells for detainees with, or suspected of having, the virus) could wait even longer because their cases would be likely to be heard last, to prevent delays to others in using the room due to the additional cleaning needed. Before the pandemic, most detainees would have left police custody early in the morning for transport to court.

Virtual remand hearings offer opportunities to reduce detention for detainees charged after the morning court transport run because they may still be able to have their hearing that day. This would avoid them waiting until the next day to be transported to court, as would likely have occurred before the pandemic. As forces reconsider the use of virtual courts, it is important that the advantages and disadvantages of virtual remand hearings are fully evaluated so that potential benefits are not lost.

Forces are clearly mindful of the delays for detainees due to virtual remand hearings; custody officers only remand into custody when it is essential. In one force, an inspector reviews remand decisions to ensure that a remand is justified and to determine whether the police could apply bail conditions that a court might think applicable, so that the detainee can be bailed to appear at court at a future date.

On occasions, detainees are further remanded at their hearing and held in police custody for longer. They should be transported to prison but are occasionally 'locked out' because the prison reception areas cannot accept them. Twenty-seven forces told us they had been affected 'to some extent; by prison lockouts, with eight of them saying they had been 'moderately' affected.

Police bail was not used to minimise detention times in order to minimise COVID-related risks in custody. One force told us they had considered it, but hadn't needed to. The police's guiding principle remains to aim to complete investigations during the first period of detention.

However, our fieldwork shows that the use of pre-charge police bail increased significantly. This is mainly because:

- forces can only obtain CPS advice for certain categories of cases as set out in the agreed [CPS and NPCC interim charging protocol](#); and
- forces can only obtain charging decisions for cases where their intention is to remand detainees for court.

Custody officers told us about the increase in the use of prepared statements, which mean that a detainee must be bailed for a later interview. A significant number of pre-charge bail cases related to suspects in domestic abuse cases where conditions are needed to safeguard victims.

There are strict timescales and authorisation arrangements governing the use of police bail. If a case is not dealt with within the time limits (applicable bail period) then the suspect will cease to be on bail and officers must consider whether to pursue further extensions through court applications or release them under investigation. This does not allow conditions to be attached, which presents potential safeguarding concerns for any victims or witnesses involved in the case. If the use of bail continues to increase, forces face a difficult situation. They will be managing cases that cannot be brought to completion within the necessary timeframe, and suspects may have long waits for their cases to be dealt with.

Some forces took the opportunity to use staff removed from frontline duties (because of health reasons) to clear outstanding cases where detainees had been released under investigation. This reduced numbers of outstanding cases, which is positive. However, it makes it difficult to accurately assess whether the use of release under investigation is changing during the pandemic.

COVID-19 has not affected how long detainees might wait in custody if they need a Section 2 (Mental Health Act 1983) assessment or need to move to a mental health bed. Less than half of forces collect and monitor this information. Where available, the information showed that although a few forces have experienced longer waits, most did not for the period April to August 2020.

However, nearly a third of forces have had instances when they needed to detain a person under Section 136 of the Mental Health Act. This is because the person requires an assessment but it has not been possible to carry it out before the PACE time limit expires (this prevents a person being held in custody for longer than 24 hours unless authorised by a superintendent because of exceptional circumstances). Although these detentions may not be directly linked to COVID-19 factors, the

increase in incidences of mental ill health related to it may lead to additional pressures on custody and mental health staff, as well as longer waits for detainees.

## Working together

Our discussions with officers indicate that joint working in responding to the pandemic has been good. The need to respond to a shared problem and react quickly means that discussions take place, and decisions are made, without the delays sometimes associated with more formal structures and meetings.

Our fieldwork showed that mental health services provided advice and assistance to forces at similar levels to before the pandemic and helped keep people with mental ill health out of custody. With one or two exceptions, these services seem to have been maintained despite the pressures on the wider health service. Some forces told us that they hoped new ways of working, and the positive relationships developed – for example, picking up the phone and sorting problems out quickly – would continue in future.

Liaison and diversion (L&D) services are of critical importance in helping custody deal with detainees showing symptoms of mental ill health. Our fieldwork showed that these services are largely continuing in the same way as before the pandemic. However, we found that some L&D workers had been working virtually rather than from the custody suites, especially at the start of the pandemic, which custody officers felt was not as good a service as that offered in person.

There was some good work between forces and HM Courts & Tribunals Service to implement virtual remand hearing arrangements quickly and allow hearings to take place from police custody. Some forces already had virtual arrangements in place, but others had to set them up.

We found a good example in Gloucestershire where the force, working with a neighbouring force (Avon and Somerset) and HM Courts & Tribunals Service, helped to set up a court that only hears remand hearings. It removes the need for them to be slotted in between other defendants, so it helps reduce delays. This remand hearing court is said to be operating well and helping minimise delays for detainees.

In Wales, there are good joint working arrangements throughout the Criminal Justice System. An agreement to keep the courts open was made quickly. Virtual courts are only used for detainees who have, or are suspected of having, COVID-19.

The relationship between some other police forces and HM Courts & Tribunals Service is becoming strained. Forces have had to pay for managing the virtual remand hearing process from their own budgets. This involves significant sums of money. The Metropolitan Police Service estimates that it will cost £2m a year for additional officers to support the hearings, and for Norfolk Constabulary, where virtual courts are already in place, the cost is an additional £105,000 a year. This cost cannot be met by forces in the long term. It is eroding good will and working relationships between forces and the judiciary system.

There are additional costs for forces to bear when running the virtual hearings. Custody and detention officers must continue to manage detainee risks and look after

them during their extended time in custody while they wait for virtual remand hearings. Some forces told us they planned to stop running them because of these pressures.

Since our inspection, we have learnt that most forces have stopped running virtual remand hearings from custody other than for detainees with, or suspected of having, COVID-19.

We heard different views on the advantages and disadvantages of virtual remand hearings. Most forces recognise the potential efficiencies and advantages for themselves, the courts and detainees. For example, some detainees may have their hearing more quickly and have a reduced detention time. The risks involved in transporting detainees are also minimised. However, detainees who have virtual remand hearings spend longer in cells. This can affect their mental well-being.

Some forces want to stop virtual remand hearings because they cannot manage the cost involved as well as the other requirements that should not be their responsibility. This is the wrong reason for making changes.

HM Courts & Tribunals Service and forces should work together to ensure that detainees receive swift justice and that public money is spent effectively. The use of virtual remand hearings should be fully evaluated before decisions are made about their future.



# The strategic approach to managing custody services during the pandemic

## Meeting demand

At the start of the pandemic, forces had no way of knowing how it would affect the number of detainees entering custody, including those with, or suspected of having, COVID-19. They had to plan how to meet the demands of managing and caring for detainees in a pandemic environment, and ensure that custody suites were safe for all those working, visiting or being detained in them. They anticipated a reduction in staffing levels that may limit their ability to meet these new demands.

Forces responded quickly to make sure they had enough custody officers and staff to continue providing custody services by:

- making arrangements to manage demand by controlling the number of detainees entering custody;
- making plans to manage increased sickness and absence levels; and
- providing a custody environment that was as safe as possible to work in, to reduce the impact of the virus on staff.

They managed this in various ways, including avoiding arrests where possible and taking detainees to another suite to spread demand. One of the fieldwork forces opened and closed suites as needed so that staffing resources could be better shared between them.

Forces also tried to keep sickness as low as possible. They have a clear focus on the health and well-being of their staff and invested, and continue to invest, in physical changes to custody suites and personal protective equipment (PPE) supplies to keep their staff (as well as staff from other organisations, detainees and visitors to custody) virus-free.

Some of the fieldwork forces had obtained testing kits, although testing is not routinely provided. All closely monitored sickness. Those unable to work in the custody suites because they must shield or self-isolate were redeployed to administrative and other tasks that support custody services from a distance.

The anticipated staffing shortages did not materialise. We were told that sickness levels were lower than expected – in some cases, better than before the pandemic. This means that some of the arrangements to manage demand were not needed.

Our survey showed that more than half the staff working in custody felt that suites had been adequately staffed “all or most of the time”. However, there were variations



between forces. Well over one third of respondents expressed concerns. One said: “We are constantly chasing our tails and unable to take basic comfort breaks due to lack of staff.”

The officers we spoke with during our fieldwork shared these concerns. They didn’t feel that they had enough staff to meet all the expectations of them. COVID-19 has placed additional demands on custody staff, including new working practices.

They must now:

- manage virtual remand hearings, the use of which has massively increased;
- supervise some virtual legal advice arrangements; and
- look after more detainees while they wait for virtual remand hearings.

Forces are struggling to meet this demand. There seems to be little planning throughout the wider Criminal Justice System about how this demand should be managed.

## **Guidance on responding to COVID-19**

The NPCC lead for custody provided clear guidance for forces at an early stage in the pandemic. Guidance covered a range of topics, including:

- managing detainees suspected of having, or diagnosed with, COVID-19;
- arrest and detention;
- minimising human traffic in custody; and
- increasing safety in the custody environment.

Forces used this to develop their own custody guidance. They changed procedures as more became known about the impact of the pandemic – for example, how PPE should be used. They communicated the changes to staff through various media, including regular briefings, emails and video messages.

The staff we spoke with told us they felt well informed, although the volume of information was initially overwhelming and confusing. This was confirmed by our survey results. One survey response said: “I believe we have been well briefed on the up-to-date policies and we have been implementing them well within the suite.”

## **Performance management information**

The approach to gathering and monitoring performance information to assess how COVID-19 is affecting custody services does not provide a good understanding of what is happening.

We asked forces to provide information on custody services that we anticipated would be affected by the pandemic. Not all were able to provide the information we requested. We asked for information for the period April to August 2020 and, when relevant, for the same period in 2019.

All forces knew how many detainees entered custody, but not all could say how long they spent there. Other than in one force, information was not being collected to assess the effect of changes to legal advice following implementation of the temporary

interview protocol. Information on waits in custody for Section 2 Mental Health Act assessments and mental health beds was also limited.

Our rolling programme of custody inspections regularly identifies that forces gather limited performance information, so these gaps aren't surprising. However, they now make it difficult to understand how the virus is affecting some important areas. For example, it would be useful to know how much longer detainees spend in custody waiting for virtual remand hearings to assess the effect on demand for staffing and other resources. This could underpin discussions, especially with HM Courts & Tribunals Service, on how to improve.

We found that our fieldwork forces monitored sickness in a comprehensive way. They were also collecting information on waiting times for booking detainees into custody and on how often bail is used. Some monitored court backlogs. However, they weren't able to tell us how many of the detainees entering custody had, or were suspected of having, COVID-19. It is likely that this information cannot easily be extracted without a change to computer systems, because it is entered on custody records as free text.

Several sources told us that the number of COVID-19 risk detainees was low. They also told us that it is sometimes difficult to establish whether a suspect is a risk: some suspects would say they had symptoms in the hope of avoiding arrest, and officers must accept what they are told.

All forces need accurate information to track numbers and trends, and assess the true impact the virus has on the provision of custody services. This will allow them to make informed decisions on how to meet future demand and look after their detainees.

The OPCCs' Independent Custody Visiting Schemes are providing some external scrutiny of how detainees' needs are being met during the pandemic. Although the ability of independent custody visitors (ICVs) to provide external scrutiny and monitoring has been restricted, they have found alternative ways of working. In our fieldwork forces these included:

- remote access to review custody records;
- virtual tours of custody suites using laptops or telephones; and
- speaking with detainees on the phone.

Visiting is kept under review to respond to changing national or local circumstances. The ICV managers we spoke with all felt that the arrangements were working as well as possible in the circumstances, and that problems or concerns they raised with forces were addressed appropriately.

# Managing detainees' risks

Overall, forces are managing COVID-19 risks, including the risk of virus transmission, well. They have made arrangements to assess the risks detainees pose before they enter custody and to manage any detainee with symptoms of the virus safely.

In the fieldwork forces, risk assessment starts early – when arrest is being considered, in line with NPCC guidance. Arresting officers ask detainees a series of screening questions based on public health guidelines. Many call the custody suite to discuss the arrest and provide risk information in advance of arrival. One survey response said: “it allows custody staff to better manage risk and a more consistent flow of detainees through custody”.

On arrival at custody suites, staff conduct another similar risk assessment. In four of the fieldwork forces, this takes place outside, either in the yard or police van. The booking-in process continues as usual if no COVID-19 risks have been identified.

Once at the custody desk, the usual risk assessment is carried out. Custody officers told us they often ask supplementary questions, recording the answers in free text on the detainee's custody record. Healthcare practitioners are usually readily available in the suites and can inform the risk assessment when needed. Some forces take body temperatures as an additional precaution.

Any queues for custody are managed as safely as possible. Efforts are made to maintain social distancing, which means that some detainees may be held in holding areas in the suite or cells while others wait outside in yards or vans. Officers from one custody suite told us that detainees waited in a neighbouring public car park to protect them from the weather. Our survey showed that many custody staff felt that detainees waiting to be booked in were safely managed, although this varied by force. Almost a quarter did not think this.

There were some triaging arrangements in line with normal working practices, but we did not find any that were specific to COVID-19, for example trying to deal with a detainee who might be especially vulnerable to the virus because of their age or ethnicity.

Everyone calls ahead when COVID-19 symptoms are present or suspected. When this is the case, a decision is made – by a central unit, an inspector or custody officers in a custody suite – on the best custody suite (and in some cases, which part of the suite) for the detainee. The booking-in and risk assessment process happen at that location to prevent unnecessary travel through other areas of custody and to reduce the risk of spreading the virus.

The information and documents provided by most of the 43 forces suggest that they are taking similar approaches to the above to manage detainee risk and to minimise the spread of COVID-19.

## **Provision of healthcare services**

Custody officers generally reported that healthcare arrangements worked well. Healthcare practitioners are based in most of the custody suites. They were available to assess detainees who had COVID-19 symptoms and help custody officers decide whether they could continue to be detained as well as to develop care plans to look after them safely.

Not having healthcare practitioners based in suites was an important consideration for one force. It decided to close two custody suites so that all detainees could go to suites that had the facilities and health staff available to deal with them more quickly.

More than half the forces have changed their healthcare guidance to take COVID-19 into consideration. For example, healthcare practitioners conduct examinations in cells rather than the medical room where possible.

A few forces expressed concerns that demand on healthcare practitioners was higher than usual, because detainees spend longer in their cells while they wait for virtual remand hearings. Some custody officers also had concerns that extended stays in the cells are adversely affecting the mental health of some detainees, making further demands on health services.

## **Keeping detainees safe in custody**

Visiting and checking detainees at a frequency commensurate with their risks of self-harming continue as before the pandemic.

Forces told us that they are making more use of CCTV and cells with glass-fronted doors where available so they can more easily observe detainees. However, detainees' safety has remained paramount – staff have not shied away from using level 4 close proximity observations when necessary, when an officer sits outside a cell and constantly watches a detainee. This takes place irrespective of whether a detainee has symptoms of the virus.

Officers wear PPE to reflect the level of risk and use full PPE kit when they suspect symptoms.

Our survey showed mixed views on whether close proximity observations could be carried out safely. However, the frontline response officers we spoke with who normally conduct these observations told us they were satisfied with the arrangements that had been made to keep everyone safe.

Detainees' safety was also paramount during custody handovers between outgoing and incoming shifts. All the custody officers we spoke with told us how important it is to make sure that detainee risks are discussed and shared between staff, and well understood. However, as handovers involve a group of staff coming together, and are subject to requirements such as recording, it can be difficult to maintain social distancing when carrying them out.

Some forces addressed this by conducting handovers in separate rooms and using body-worn cameras to record them, in line with the College of Policing authorised professional practice. In other forces, staff wear PPE.

Our survey showed that only half of custody staff felt that staff handovers are carried out safely. Nearly a third of respondents expressed concerns. This suggests that forces should consider new ways of conducting handovers to better reflect current guidelines and circumstances.

## **Releasing detainees suspected of having COVID-19**

Forces use a variety of methods to try and ensure the safe release of detainees when COVID-19 is a concern. For example, some force policies include advising the detainee to self-isolate at home, offering them a lift home and/or providing face masks.

Our fieldwork forces adopted methods including:

- trying to arrange for a family member who lives with the detainee to collect them;
- using police vehicles to take detainees home (which then need to be deep cleaned and sanitised); and
- advising detainees to have a COVID-19 test as soon as possible.

One force asked detainees to remain in their cells until they could be taken home, having signed an undertaking agreeing to remain in police cells until police transport arrived. We heard that some detainees who may have needed to travel home by public transport had been released (with a mask) despite being a COVID-19 risk.

Forces face a significant problem when releasing detainees who may not be willing to co-operate in their safe release or be prepared to delay their departure from custody while safe arrangements are made. If a detainee wishes to leave and a police vehicle cannot be arranged in the available time (which usually involves diverting officers from their main duties), there is little alternative to issuing a mask and advice and allowing the detainee to leave. Some custody officers expressed concerns over this.

We agree with them. Although the numbers are low, this is a significant concern. Detainees with possible infection being released back into their communities risks spreading the virus. Forces should give more consideration, seek advice and work with other organisations to make sure that detainees are released safely.

# Caring for detainees during the pandemic

Most detainee care and welfare arrangements are largely unchanged.

Food and drink are provided as regularly as before the pandemic, but with some changes in preparation. For example, using different rooms to prepare food and drink and to dispose of it, and observing social distancing when leaving food and drinks for detainees.

Other provisions, such as showers and exercise, are made available by custody staff when feasible. It is difficult for us to judge whether these were offered appropriately, because the custody records we saw held very little detail – something we often find in our routine custody inspections. ICVs suggested that detainee care was very much as it had always been, although they acknowledged that the level of scrutiny in their assessment was less comprehensive than before the pandemic.

Our discussions with custody officers indicated that although the intent is to offer detainees held in COVID-19 designated cells the same access to welfare provisions, especially showers and exercise, as those in non-designated cells, it is difficult to provide in practice.

There are big differences in how custody suites are designed between, and sometimes within, forces. Some have showers and exercise facilities that can be effectively partitioned from the rest of the suite but others don't. This means that, in some cases, COVID-19 risk detainees must use the same facilities as other detainees. Sometimes they must move through communal areas to reach them. This may not be an acceptable risk in some custody suites.

Additional risk must be managed when providing showers or exercise for COVID-19 risk detainees. Any facilities used must be deep cleaned to prevent viral transmission. This makes them temporarily unavailable. It increases the time detainees must wait, as well as costs.

Deep cleaning incurs additional costs. Staff must follow safety protocols and procedures, such as wearing additional PPE and appropriate clothing, and sanitising. They must also ensure the safe disposal of any personal hygiene items used by detainees.

Our fieldwork forces told us they would try to meet a COVID-19 risk detainee's request for showers, exercise etc, but that they would not routinely do so. Forces should be mindful that any imbalance in provisions has the potential to influence detainees' actions during any subsequent detention. They may become less inclined to divulge symptoms or shielding factors if they believe they will get fewer care provisions.

Custody officers told us that more work is created for custody detention officers when virtual remand hearings are used because detainees stay in custody longer. This, in turn, increases the number of detainees held in the suite. More than half the respondents to our survey felt that virtual remand hearings had made it more difficult to care for detainees.

# Detainees' legal rights

## Changes to detainees' legal advice and representation

Temporary changes to legal advice and representation at interviews were made in response to the pandemic. They were introduced by a [temporary interview protocol](#) agreed by the NPCC, the CPS, the Law Society, the CLSA and the LCCSA. Paragraph 10 states:

“Legal advice for suspects should take place whenever possible over the telephone (for legal advice) and by video link for interviews with suspects. This may depend on the police facilities and devices available.”

In response, the Home Office proposed temporary changes to the PACE Code C of the Codes of Guidance. Although not yet enacted, it provides further detail about how the changes are to be implemented.

Forces have adopted the temporary interview protocol, but we found that implementation of the protocol varied. This includes how detainees are made aware of changes to legal advice and representation as well as how consents relating to representation are obtained and recorded on the custody record.

## How detainees receive legal advice and representation virtually

Forces had little time to prepare for changes to the way in which detainees receive legal advice. For many forces this was, and continues to be, a work in progress.

Significant effort has been put into arrangements to allow detainees to receive legal advice by telephone or other electronic means and to have virtual legal representation at interview.

Our fieldwork forces helped detainees to receive legal advice by telephone/electronic means rather than in person, using a range of technology and facilities already in the suites. They have added telephones and lines, mobile phones with wireless headsets and laptops so that detainees can speak with their solicitors. One survey response said:

“Telephone contact and provision for Solicitor consultation via incoming call barred mobile has been helpful although there is a negative impact potentially on the value of interviews following such as Solicitor is not present, and advice tends to be no comment interviews.”

Some arrangements have led to concerns about the privacy and confidentiality of legal consultations between detainees and their solicitors. Some suites include rooms with



CCTV or glass-fronted doors or windows – detainees can be seen but not heard – which offers them privacy. Consultations often can only take place in suites without that facility with a custody officer or custody detention officer in the corridor to make sure the detainee does not use the communication equipment to self-harm. This means they could potentially overhear any conversation taking place.

Providing the equipment to allow legal advice by telephone or other electronic means and representation at interview by video link has meant extra expenditure for forces. It also places extra demands on the staff required to oversee their use.

Custody officers told us that they explain the changes to the way in which detainees can exercise their legal rights when booking them into custody, but that they didn't always record it on the custody record. We did not find information about this recorded in any of the 140 custody records we examined, nor any evidence that a detainee had given their consent when legal representation at interview was to be provided by video or telephone link.

We discussed this with our fieldwork forces. Three forces have since amended their computer systems to show that the changes to the provision of legal advice and representation have been explained to detainees and to record their consent.

As the anticipated changes to the codes of guidance to reflect the temporary changes to legal advice have not yet been introduced, there are no approved changes to the notice of rights and entitlements that custody officers give to detainees. However, none of the forces we spoke with had prepared any additional information for detainees that would explain the changes to legal advice and representation and what these changes mean for them. It may be wise to draft an information leaflet at national level that all forces can use.

There was little information to show how many detainees were receiving legal advice by telephone or other electronic means, or legal representation at interview by virtual means rather than a solicitor attending in person. This information was not always recorded on the custody records we examined. There was also no record of what time requests for solicitors to attend in person were made and what time they arrived at the suite. This makes it difficult for forces to understand how the protocol is working and how detainees are receiving their legal rights.

We asked all forces to provide information on the breakdown between virtual legal representation and that given in person. Other than one force, none could provide it. When we asked them to make an estimate, 13 forces said that virtual representation is being given in over 75 percent of cases. A further 10 said that virtual representation is given in over 50 percent of cases.

Our conversations with custody officers indicate that legal representatives were generally reluctant to attend custody suites at the start of the pandemic. At the time of our inspection, they were coming more often. We were told that solicitors had continued to attend in person for serious offences.

Custody officers should be involved in the decision regarding how legal representation should be provided at interviews. The temporary interview protocol sets out that they need to satisfy themselves that the decision to use a video or telephone link would not have a negative effect on the detainee's ability to communicate effectively with their

solicitor. However, based on our discussions with custody officers, it seems there are differences in understanding what this means in practice.

Some custody officers were not involved in the decision at all. In some cases, solicitors seemed to decide whether to attend in person or virtually. In others, decisions were left to the investigating officers. Most custody officers told us that they had little influence over the manner and appropriateness of how detainees receive legal advice or representation in interview.

Similarly, we found little evidence recorded in the cases we reviewed to suggest that the changes to legal advice and representation were discussed with detainees during PACE detention reviews, and whether the PACE inspector was satisfied that the detainee was receiving their right to legal advice and representation in an appropriate manner. Many such detention reviews are now conducted over the telephone to minimise footfall in custody. This is not as good as being able to speak with a detainee face to face. Forces should ensure that it does not become common practice when the pandemic is over.

Overall, the implementation of the temporary interview protocol presents a confusing picture. It is difficult to see that decisions regarding the provision of legal advice and representation are being made in the best interests of detainees.

## **Appropriate adult and interpreting services**

Access to appropriate adults and, to a lesser extent, interpreters during the COVID-19 pandemic was described in our survey to be “as easy as before the pandemic”. The custody officers we spoke with told a similar story.

Some appropriate adults and interpreters were reluctant to attend suites at the start of the pandemic, so some virtual arrangements were used. However, once they were assured that custody was a safe environment, their attendance in person resumed. A few difficulties have arisen from the need for some to shield or self-isolate limiting their availability, but generally few concerns.

Some forces already had arrangements for interpreting services to be provided virtually. They told us that their use of virtual interpreting services had increased. Nearly two thirds of survey respondents said that obtaining interpreters was similar to before the pandemic.

Some staff suggested that virtual interpreting services offer benefits – they minimise delays waiting for interpreters to attend in person and potentially lessen the time a detainee may spend in custody. One survey response said:

“Enabling interpreters to be able to be present in interviews via video link has been a positive new practice that has come about as a result of the pandemic. The practice eliminates the often-long travel times involved for interpreters having to attend in person.”

## Virtual remand hearings

At the start of the pandemic, forces acted quickly to ensure that detainees would continue to have access to justice by setting up, or extending, virtual remand hearing arrangements. They overcame significant problems to achieve this.

COVID-19 led to the closure of many courts in England and the introduction/extension of virtual remand hearings operated from police stations. These hearings are currently used for most detainees, although children and vulnerable adults should continue to attend court in person. The courts remained open in Wales, although virtual courts are used for COVID-19 risk detainees.

All fieldwork forces provided extra equipment in their custody suites to run virtual remand hearings. They are also providing staff to manage the hearings and present detainees to the court.

Prison escort and court staff who are responsible for the care of detainees once they leave police custody to attend court have significantly fewer detainees to transport and care for during the pandemic. Forces told us that many of these staff are willing to help in managing the process of virtual courts but cannot do so because they are not authorised to deal directly with detainees in police custody. These staff are helping as best they can with administrative tasks such as liaising with solicitors and associated court paperwork in some forces.

In their self-assessments, nearly all forces said they had been affected by operating virtual remand hearings. About half said they had been “severely affected”. Seventeen reported that they had had to move detainees to other police stations for virtual remand appearances because they didn’t have facilities in all their custody suites.

The implications of using virtual remand hearings have been discussed at various points throughout this report. Virtual remand hearings ensure that detainees can have their hearing. However, forces are concerned that the arrangements cannot continue in the long term. We have been told that most forces have withdrawn them. One survey response said:

“When we have detainees here simply for court, the responsibility is staying with us, including their exit plan. The courts should be more accountable at this stage.”

# Providing a safe custody environment for detainees, staff and visitors

## Working practices and the custody environment

Forces are making considerable efforts to minimise footfall in custody, promote social distancing and isolate any detainee with COVID-19 risks. However, the physical environment in suites and the practicalities of custody operations make this difficult.

It is not possible for forces to have a one-size-fits-all approach to managing custody environments safely during the pandemic because they are all different sizes, designs and environments.

Forces with larger, newer facilities typically have bigger spaces, and sometimes multiple facilities, to help staff to work more safely. Such facilities can also designate areas or wings for COVID-19 risk detainees. Detainees can often be taken to them directly, without going through communal areas. They can often stay separate from the remainder of the custody block. However, forces that do not have these facilities rely on using cells as far away as possible from other detainees. Sometimes the number of detainees in a suite means that not even this can be achieved.

PPE is readily available in suites for custody staff, visitors and detainees to use. We were told that there were initial difficulties securing PPE, but adopting a more centralised approach to ordering and distributing equipment throughout forces resolved shortages.

The Metropolitan Police Service decided to treat its custody suites as clinical environments in line with the Faculty of Forensic and Legal Medicine guidelines. In consultation with its health partners, it improved its PPE and cleaning materials to a standard that matches the medical-grade products used in hospitals.

Custody visitors are routinely provided with PPE, including supplementary protection for any contact with a COVID-19 risk detainee. Some forces have made it mandatory for officers and staff to wear PPE while in custody suites, and detainees are encouraged to wear it when not in their cells (they can choose not to). Over three quarters of staff responding to our survey said they had adequate PPE. One commented:

“The constabulary has always maintained huge amounts of PPE for us to use, encouraged us to use it and to spread around good practice to others attending.”

Many forces have made changes to the communal or shared areas of their custody suites, as well as to their working practices, to improve safety. Such changes include:

- floor markings to try and keep people two metres apart;
- signage reminding users to socially distance;
- new movement controls such as one-way systems;
- easy access to hand sanitisers; and
- keeping visitors to a minimum.

Furniture, such as desks, chairs and workstations, has been removed in some working areas to create more distance between people. Some forces have installed plastic screens for booking-in areas and in interview rooms as infection control measures.

One of the main ways of minimising the spread of the virus is through social distancing. Forces are doing their best to implement this, although it is difficult to achieve in custody suites. This is because:

- custody officers and staff come together at shift handovers to discuss the detainees being held in custody (nearly a third of staff responding to the survey felt that these handovers are not carried out safely);
- officers may need to use force to restrain a detainee; and
- it is impossible to do routine custody processes such as taking fingerprints and DNA without being physically close to someone. PPE is usually readily available and used to minimise risks. But risks cannot be removed completely.

About two thirds of the survey respondents who reported that there were social distancing measures in place felt that the measures helped them to distance from staff or visitors “all, most or some of the time”. However, more than a quarter said that the measures had not helped. When staff were asked about socially distancing from detainees, nearly half of those with measures in place said that they didn’t help at all. One said:

“there are many occasions where it is impossible to social distance in custody. We have no choice but to do cell insertions. Handovers are poor for social distancing and custody can be a small cramped environment, having all staff in one room increases risk, however we have no choice but to do it.”

Temperature checking is a useful way to help determine whether a person may have COVID-19. It is routinely used in many business and social settings to help avoid spread of the virus in the community. This could be an area where the police service takes a national view and provides guidance on.

Some forces are already using temperature checking as a tool to help minimise the spread of the virus in custody, although the extent and effectiveness of this approach varies considerably. We found a mixture of practices in our fieldwork forces – from everyone’s temperature being taken before they enter a suite, to only temperature checking detainees who had declared symptoms. Some forces asked the healthcare practitioner to conduct a temperature check once a detainee had entered the suite.

One positive result of the changes to working practices to improve safety in suites is that custody officers have greater control over the custody environment, especially the

number and movement of visitors or other police staff. In our routine custody inspections we have often raised custody officers' lack of control of the custody environment as a concern. These new working practices offer the opportunity for an enhanced level of control to continue. We hope this is a learning point that forces can consider adopting. One survey response said:

“A more controlled custody environment during the pandemic I believe should be adopted going forward. This includes the movements of detainees and officers around the custody suite.”

## **Cleaning and hygiene**

Cleaning and hygiene arrangements and standards have improved in custody suites.

Some forces told us that they had enhanced daily contract cleaning arrangements to increase the frequency of cleaning and target high-frequency touch points such as door handles and light switches for disinfection. They also deep cleaned when required – for example, in cells used by detainees with COVID-19 symptoms. These cells are also sometimes taken out of use for 72 hours to limit possible exposure to the virus.

Custody staff are routinely reminded of the importance of cleaning workstations before, during and after use. Interviewing officers are also expected to wipe down areas they use, such as interview rooms. Survey feedback was mostly positive on this subject, with over two thirds of respondents feeling that their areas of work were kept 'sufficiently clean' (although some staff disagreed).

Overall, forces are doing well in making their custody suites as safe and clean as possible. Although some actions may not have taken place as quickly as staff would have hoped, two thirds of staff responding to our survey said they felt that reasonable steps had been taken to keep them safe from COVID-19.

## Our conclusions

The police service is generally responding well to the problems COVID-19 presents. It acted quickly to manage demand in custody suites and make them as safe as possible for staff, detainees and visitors.

Some custody suites and working practices make it more difficult to manage the risk of contracting and/or spreading the virus. Forces are making changes where possible to deal with this, for example by enhancing their approach to risk assessment.

In some respects, COVID-19 is not affecting normal activities. The number of detainees entering custody remains similar to before the pandemic. Caring for detainees and looking after their welfare is largely unchanged. Support from mental health services to help frontline officers deal with people with mental ill health, on the street and in custody, is largely being maintained. Some forces have even reported improved joint working in response to the pandemic.

However, the police service faces significant problems arising from the use of virtual legal advice and representation for detainees rather than solicitors attending in person, in accordance with the temporary interview protocol. It has cost, capacity and demand implications. In addition, forces' lack of information to show how detainees have received their legal rights while in custody may have implications for the Criminal Justice System.

Virtual remand hearings have been widely used in England. On the whole, they seemed to operate effectively. However, they also had significant cost, capacity and demand implications for the police service.

Forces are not doing enough to assess how COVID-19 is affecting custody services. While sickness and absence levels among officers and police staff are closely monitored, other areas are not being monitored. For example, forces are not tracking the number of detainees entering custody who have, or who are suspected of having, the virus. Nor are they monitoring how much longer detainees are spending in police custody because they are waiting for virtual remand hearings. This is important information – as the pandemic continues it would help forces resource their custody services appropriately.



## Future considerations

Custody services changed during the pandemic. Some changes may continue and some may stop. Some are likely to produce extra demand for forces, other organisations and the Criminal Justice System.

- Health services note an increase in mental ill health for the wider population during the pandemic. They forecast this will increase as the effects of loneliness, isolation and anxiety continue. Forces report that this increase has already started. They rely heavily on mental health services to support them when dealing with people with mental ill health, both on the street and in custody. Increased demand could make this more difficult. Finding health-based places of safety for people detained under Section 136 of the Mental Health Act to avoid taking them to custody and arranging mental health assessments for detainees in custody may also become more difficult.
- The increased use of pre-charge bail is a potential problem. It may not be possible to deal with cases in the prescribed time, particularly as the number of cases increases. If investigations can't be finalised in time, this has other implications. For example, conditions are often placed on detainees released on bail while being investigated for domestic abuse offences to help safeguard victims. But if investigations cannot be finalised within applicable bail periods, bail and any conditions end. Suspects may have to be released under investigation instead.
- Virtual arrangements to allow detainees to continue to receive their legal rights in custody without a solicitor being physically present can offer advantages. For example, it might allow a detainee to exercise their legal rights more quickly. However, we found differences in how forces implement these arrangements. And there is too little information to monitor how detainees are receiving their rights. This may have longer-term implications as they proceed through the Criminal Justice System – for example, if the way they received their advice can be challenged. It is also not clear that decisions on how legal advice is provided are always made in the best interests of the detainee. The arrangements are intended to be temporary, so we expect them to stop after the pandemic. But there may be learning from this for forces.
- The inspector should be satisfied that the detainee received their right to legal advice and representation in an appropriate manner during PACE detention reviews. Many such reviews are being conducted over the telephone to minimise footfall in custody. This is not as good as being able to speak with a detainee face to face. Forces should make sure that this does not become common practice when the pandemic is over.
- Custody officers now have greater control over the custody environment – for example, they can oversee the movement of visitors or other police staff in the suite much better. There is also a greater focus on keeping custody suites clean.



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