



## BRIEFING PAPER

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# Police powers: detention and custody

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2. The custody estate
3. Reforms to the treatment of vulnerable people in detention
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## Summary

### This briefing provides information for England and Wales only

This briefing paper is part of a series which discuss police powers in England and Wales. The series is introduced by the briefing [police powers: an introduction](#).

The police have powers, set out in [part IV](#) and [part V](#) of the *Police and Criminal Evidence Act 1984* (PACE), to detain those they have arrested on suspicion of committing a crime. The detention of a suspect is often crucial to a police investigation. It allows officers to question them and collect their biometric details. This information helps the police decide whether they have grounds to charge a suspect with a crime.

The police also have powers to detain adults for their own (or other's) safety under [section 136](#) of the *Mental Health Act 1983*. However, adults detained under section 136 of the 1983 Act can only be held in a police station in exceptional circumstances.

The police have separate powers to detain those suspected of terrorism offences under [Part V](#) and [Schedule 8](#) of the *Terrorism Act 2000*.<sup>1</sup>

The police detain people in custody suites which are normally situated within large police stations. There are around 200 custody suites across England & Wales. Individual police forces are responsible for deciding how many custody suites to operate and where to situate them.

Her Majesty's Inspectorate of Constabulary, Fire & Rescue Services (HMICFRS) and Her Majesty's Inspectorate of Prisons (HMIP) jointly inspect police custody. They measure forces against their [expectations for police custody](#). They also monitor compliance with statutory guidance on detention powers ([PACE Code C](#)) and College of Policing (the body responsible for professional standards in policing) has also published guidance on [detention and custody](#).

### Vulnerable people in custody

There have been longstanding concerns with the delivery of police custody and particularly the treatment of vulnerable people in custody.

In 2015 HMICFRS (then HMIC) published a [thematic inspection of the welfare of vulnerable people in police custody](#), which was followed in 2017 by Dame Elish Angiolini independent review into [deaths and serious incidents in police custody](#). Both Dame Elish and HMICFRS recommended major changes to the police's approach to vulnerable people and suggested that other public services should play a greater role in caring for vulnerable people who come into contact with the police.

Since Dame Eilish's Review the Government have legislated to minimise the use of police custody for those with severe mental health needs. They asked the College of Policing to revise its guidance on [detention and custody](#) and are working to ensure that every custody suite has access to 'liaison and diversion services' for those with mental health needs or substance addiction.

Despite significant political scrutiny on custody since Dame Eilish's Review, concerns have persisted. HMICFRS and HMIP have said that "most forces" have "started to improve their custody services" but they remained concerned with a number of aspects of the delivery

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<sup>1</sup> **Note:** This research briefing does not discuss police powers to detain those suspected of terrorism offences.

of custody including: outcomes for vulnerable detainees, staffing levels and the way in which forces record information about those who enter police custody and their time spent there.

### Pre-charge bail

Reforms to pre-charge bail (sometimes known as police bail) implemented in 2017 have come under strong criticism from stakeholders across the criminal justice system.

Pre-charge bail is used to release some suspects who cannot be charged whilst they are detained at a police station. Whilst on pre-charge bail, they must report to the police when asked and may be subject to specific conditions about where they can go and who they can associate with.

The 2017 reforms were designed to reduce both the number of people on pre-charge bail and the length of time they are subject to it. It was hoped that by reducing the use and length of pre-charge bail police investigations would become more focused and the rights of un-convicted suspects would be better protected.

There are no official statistics on the use of pre-charge bail. However, data released through FOI requests showed a reduction in the use of the power of 84% between 2016/17 and 2017/18 across 30 English and Welsh police forces.

There have been serious concerns that the substantial reduction in the use of pre-charge bail is putting vulnerable victims and witnesses at risk. There have also been concerns that the preferred alternative to police bail: 'released under investigation', is not adequately protecting the rights of un-convicted suspects. The Government has opened a [public consultation](#) on several specific legislative and non-legislative proposals designed to further reform police bail and address these concerns. The consultation closed on 29 May 2020 the Government is expected to respond in early 2021.

# 1. Powers

The police have powers, set out in [part IV](#) and [part V](#) of the *Police and Criminal Evidence Act 1984* (PACE), to detain those they have arrested on suspicion of a crime. The detention of a suspect is often crucial to a police investigation. Once detained the police have powers to question the suspect and collect their biometric information. The information collected during detention helps the police determine whether a suspect should be charged with a criminal offence.

The Home Office maintains statutory guidance on police detention powers in [PACE Code C](#). Police forces are required to detain people held under PACE in accordance with the code.<sup>2</sup>

The College of Policing (the body responsible for professional standards in policing) has published further guidance to forces on police detention powers in their Authorised Professional Practice (APP)<sup>3</sup> on [detention and custody](#).

Her Majesty's Inspectorate of Prisons (HMIP) and Her Majesty's Inspectorate of Constabulary, Fire & Rescue Services (HMICFRS) have published [expectations for police custody](#). They measure forces against these expectations during their regular inspections of police custody.

## 1.1 Duration

Persons being detained under PACE should be dealt with as quickly as possible. Officers are required to review detention of a suspect periodically and release them "as soon as the need for detention no longer applies".<sup>4</sup>

Individuals who have been arrested can normally only be detained for up to 24 hours without being charged.<sup>5</sup> However, if the offence they are suspected of is serious, a senior police officer (of the rank of superintendent or above) can authorise a suspect's continued detention for a further 12 hours.<sup>6</sup> Any detention beyond 36 hours requires authorisation from the courts.<sup>7</sup> In exceptional circumstances the courts can warrant the detention of a suspect without charge for up to four days.<sup>8</sup>

The time period within which the police can legally detain a suspect is sometimes known as the 'PACE clock'.

HMICFRS and HMIP have criticised some forces for not reviewing the detention of suspects appropriately. In July 2018 they said that "too

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<sup>2</sup> s39(1), *Police and Criminal Evidence Act 1984*

<sup>3</sup> APP is official police guidance. Police officers are expected to have regard to APP when on duty. However, there may be circumstances in which it would be legitimate for them to deviate from it. Further information about APP can be found in section 1.2 of the Library's Research Briefing [Introduction to police powers](#).

<sup>4</sup> Home Office, [PACE Code C](#), paragraph 1.1.

<sup>5</sup> s41, *Police and Criminal Evidence Act 1984*

<sup>6</sup> s42, *Police and Criminal Evidence Act 1984*

<sup>7</sup> s43, *Police and Criminal Evidence Act 1984*

<sup>8</sup> s43 and s4, *Police and Criminal Evidence Act 1984*

many forces review detention too early, too late or without speaking to the detainee.”<sup>9</sup> They concluded that in some cases reviewing practices were not meeting the requirements placed upon them by [PACE Code C](#).<sup>10</sup>

### 1.2 Treatment

[PACE Code C](#), the [detention and custody APP](#) and the [expectations for police custody](#) all make clear that those detained in police custody should be treated with dignity and respect. The custody environment is expected to be clean and safe. Those in custody must have access to appropriate legal and medical advice. Any use of force against those in custody must be necessary, proportionate and legal.

#### Detainee rights

Under [PACE Code C](#) the police must:

- Tell the suspect why they have been arrested and detained.
- Allow the suspect to speak to a solicitor at any time.
- Provide them with a [written summary of their rights](#) in a language they can understand.
- Provide them with medical care they require.
- Provide them with food and water. People who are detained must be offered at least three meals a day with water.
- Allow them to have regular breaks from questioning (including, if possible, access to fresh air).

#### Treatment of female detainees

In August 2019 a revised version of [PACE Code C](#) was introduced which requires forces to provide basic menstrual care to detainees.<sup>11</sup>

[PACE Code C](#) now requires custody staff to ask all detainees if they wish to speak to a member of staff in private about their health or hygiene. Detainees can request that they speak to a member of staff of their gender. Every female detainee must now be asked if they require menstrual products. Forces must provide menstrual products to those who need them. In some cases, subject to a risk assessment, detainees may be able to keep their own menstrual products.<sup>12</sup>

Changes were also made which requires forces to consider detainees privacy and dignity in the placement of CCTV around toilet and washing facilities and during strip searches.<sup>13</sup>

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<sup>9</sup> HMICFRS, State of Policing: the Annual Assessment of Policing in England and Wales Her Majesty’s Chief Inspector of Constabulary 2018, July 2018, p112

<sup>10</sup> Ibid

<sup>11</sup> Home Office, [PACE codes C and H: guide to the changes in the 2019 revised codes](#), 20 August 2019

<sup>12</sup> Home Office, [PACE Code C](#), paragraph 9.3A and 9.3B, see also [HCWS1796. Revision of the Police and Criminal Evidence Act 1984 \(‘PACE’\) Codes of Practice C and H:Written statement](#), 23 July 2019

<sup>13</sup> Ibid, Note 8D and paragraph 11(d)

These changes were the result of campaign lead by the [Independent Custody Visiting Association](#).<sup>14</sup> Its Chief Executive, Katie Kempen, said they should ensure that no detainee is left to bleed “for want of a difficult conversation or a cheap tampon”.<sup>15</sup> In October 2020 HMIP reported “an improving picture with a generally sufficient range of menstrual products, although these were not always offered routinely”.<sup>16</sup>

## 1.3 Investigation

The detention of a suspect is often crucial to the police investigation into a crime. Once a suspect is detained the police have powers to interview them and collect their biometric details. This evidence can help the police determine whether a suspect should be charged.

If the police do not have enough evidence to issue a charge before the ‘PACE clock’ expires they must release the suspect. [Section 1.4](#) of this briefing describes the possible outcomes once a suspect has been detained in police custody.

### Interviews

Interviews with suspects are conducted ‘under caution’ and must be recorded.<sup>17</sup> Before conducting an interview, the police must inform the suspect what they are suspected of and allow them to access legal advice if they chose to. Suspects have the right to request legal advice at any time during their police detention.<sup>18</sup> Officers must delay an interview in order to facilitate a suspect’s access to legal advice if requested.

The police do not require a suspect’s consent to conduct an interview.<sup>19</sup> Suspects may choose to answer questions with “no comment”. Following the interview suspects have the right to review a record of what was said to confirm it is accurate.<sup>20</sup>

Part 11 and 12 of [PACE Code C](#) provide statutory guidance on conducting formal interviews with suspects. [PACE codes E & F](#) provide guidance on how these interviews should be recorded. The College of Policing has provided further guidance [investigative interviewing](#) as part of their APP on [investigation](#).

### Biometric information

The police have the power to take an image, the fingerprint information and a DNA sample of almost every suspect they detain.<sup>21</sup> In most cases the police can take this biometric information without a suspect’s

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<sup>14</sup> Home Office, [Dignity of women in custody ensured by planned law change](#), 24 April 2019

<sup>15</sup> BBC News, [Police must offer women detainees period products under new rules](#), 23 July 2019

<sup>16</sup> HMIP, [Annual Report 2019–20](#), October 2020, p87

<sup>17</sup> Home Office, [PACE Code C](#), paragraph 11.1A and 11.7

<sup>18</sup> [s58](#), *Police and Criminal Evidence Act 1984*

<sup>19</sup> Home Office, [PACE Code C](#), paragraph 12.5

<sup>20</sup> Home Office, [PACE Code C](#), paragraph 11.11

<sup>21</sup> [s61- 64A](#), *Police and Criminal Evidence Act 1984*

consent and without explicit authorisation from a senior officer. However, they do require the consent and authorisation to take DNA samples in certain circumstances.<sup>22</sup>

The police can then use this information to aid their investigation associated with the suspect's arrest. If the police can legally retain the information, it can be used to aid future investigations.

### **Retention of DNA and fingerprint information**

The DNA and fingerprint information of adults convicted of a crime are held indefinitely. Those who have not been convicted of a crime may have their fingerprint and DNA information held for up to five years depending on the circumstances. Some people who have not been convicted can apply to have their records deleted early.<sup>23</sup>

[ACRO Criminal Records Office](#) is the national police unit which manages information on police records. They have published a summary of the [retention schedule](#) of finger print and DNA information collected by the police. The Library has published a separate briefing on the [retention of fingerprint and DNA data](#).

### **Retention of custody images**

In 2012 the High Court ruled that the Metropolitan Police's guidelines for retaining the images of those who had not been convicted of a crime were unlawful.<sup>24</sup> Following the judgment the Government issued a [review of the use and retention of custody images](#). The review proposed that all un-convicted individuals should be able to apply to have their photographs removed from police records.<sup>25</sup>

To support the implementation of the review across all English & Welsh police forces, the College of Policing updated its guidance on [the retention, review and disposal of custody images](#) (this guidance forms part of the APP on [information management](#)).

The Government has committed to support forces in implementing the new guidance. They have pledged to provide police forces with technology which will automatically prompt the review of custody images of un-convicted individuals.<sup>26</sup>

## **1.4 Outcomes**

There are four possible outcomes once a person has been arrested and detained by the police for a serious offence. They can either be:

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<sup>22</sup> s62, *Police and Criminal Evidence Act 1984*

<sup>23</sup> ACRO Criminal Records Office, [Retention Schedule](#), [last accessed 6 March 2020]

<sup>24</sup> [\[2012\] EWHC 1681 \(Admin\)](#), *RMC and FJ v Commissioner of Police for the Metropolis and Secretary of State for the Home Department*

<sup>25</sup> Home Office, [Review of the Use and Retention of Custody Image](#), February 2017, recommendation 1

<sup>26</sup> Home Office, [Biometrics Strategy: Better public services maintaining public trust](#), June 2018, paragraphs 28-37



- 1 **Charged or issued an ‘out of court disposal’:** If the suspect is formally charged with a crime, they will either be held in custody or released on bail to await a court hearing.<sup>27</sup>
- 2 **Released on pre-charge bail:** The suspect is free to go for now. They are required to report to the police at regular intervals whilst the investigation against them is ongoing. Some suspects will have conditions attached to their bail which restrict their activities and movements. Suspects can be on bail for an initial 28 days, after which officers must apply for extensions to keep a suspect on bail.
- 3 **Released under investigation (RUI):** The suspect is free to go but the investigation remains open and they may still be charged. No restrictions can be placed on them though they may be asked to voluntarily attend further interviews. The police are not obligated to complete their investigation within a particular time period.
- 4 **Released because they are no longer under investigation:** No further action is taken. The police should give written notice to the person confirming that they are no longer suspected of a crime.<sup>28</sup>

Officers *should* finalise their investigation within the ‘PACE Clock’ and decide whether to charge a suspect whilst they are in detention. When officers are not able to issue a charge within the ‘PACE Clock’ and want to continue their investigation there is a presumption against using pre-charge bail.<sup>29</sup>

The current system for releasing suspects from police custody is the result of major reforms implemented by [Part 4, Chapter 1](#) of the *Policing and Crime Act 2017*. [Section 4](#) of this briefing discusses the concerns about the impact of these reforms and the proposals for further legislative reform to address them.

## Charged

The police have powers to charge individuals with an offence they were arrested for. They must collaborate with the Crown Prosecution Service (CPS) when issuing a charges in certain cases. Once an individual has been charged it is up to the CPS to pursue a prosecution through the courts.

The Library briefing [police powers: an introduction](#) provides further information on the charging powers of the police.

Those who are charged with an offence are either released on bail or detained in custody to await a court hearing where the court decides if they should be bailed before their trial or held on remand. Those

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<sup>27</sup> See section 4 of the Library’s briefing [police powers: an introduction](#) for information on charging and out of court disposals

<sup>28</sup> [s34\(5C\)](#), *Police and Criminal Evidence Act 1984*

<sup>29</sup> [s30A\(1\)](#), *Police and Criminal Evidence Act 1984* and College of Policing, APP Detention and custody: [Response, arrest and detention](#), section 8 ([pre-charge bail management](#)), [last accessed]

charged with serious offences and repeat offenders will normally be held on remand.<sup>30</sup>

### Pre-charge bail

Suspects may be released on bail without charge (pre-charge bail) when it is deemed proportionate and necessary.<sup>31</sup> The decision to release a suspect on pre-charge bail must be authorised by an officer of at least the rank of inspector.

The College of Policing APP on [detention and custody](#) explains some of the reasons the use of bail might be necessary and proportionate:

Authorisation may be considered necessary, if it is:

- in the interests of national security
- for the prevention of disorder or crime
- in the interests of the economic well-being of the United Kingdom
- in the interests of public safety
- for the purpose of protecting public health.

...

Authorisation may be considered proportionate if:

- what is being done is not arbitrary or unfair
- the restriction is strictly limited to what is required to achieve a legitimate public policy
- the severity of the effect of the restriction does not outweigh the benefit to the community that is being sought by the restriction. Any restriction must be proportionate to the legitimate aim being pursued.<sup>32</sup>

Initially, suspects can only be on pre-charge bail for up to 28 days. This is referred to as the 'Applicable Bail Period' (ABP).<sup>33</sup> Investigating officers should either charge or otherwise dispose of a case or rule the suspect out within the ABP. More senior officers can extend the ABP up to three months if necessary.<sup>34</sup> An extension of the ABP beyond three months must be approved by a magistrates' court.<sup>35</sup> Magistrates can extend the ABP by three months at a time.

### Conditional bail

Some people are released on 'conditional bail', which requires them to meet certain conditions. For example, they may have restrictions placed on their movements or they may be prevented from contacting other suspects, witnesses and victims. These conditions help the police protect victims and witnesses, preserve evidence and mitigate the risk that the

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<sup>30</sup> GOV.UK, [Being charged with a crime](#) [last accessed]

<sup>31</sup> s50A, *Police and Criminal Evidence Act 1984*

<sup>32</sup> College of Policing, APP Detention and custody: [Response, arrest and detention](#), section 8 ([pre-charge bail management](#)) [last accessed]

<sup>33</sup> [s47ZB](#), *Police and Criminal Evidence Act 1984*

<sup>34</sup> [s47ZD](#) and [s47ZE](#), *Police and Criminal Evidence Act 1984*

<sup>35</sup> [s47ZF](#) and [s47ZG](#), *Police and Criminal Evidence Act 1984*

suspects commit a crime whilst on bail.<sup>36</sup> Those who breach their bail conditions can be rearrested.<sup>37</sup>

The Crown Prosecution Service has published [legal guidance on bail](#) which provides further information on the conditions of bail and the rights of those who have been released on bail.

## Released under investigation

[Section 56](#) of the *Police and Crime Act 2017* amended PACE to allow the police to release a suspect from custody 'under investigation' (RUI) rather than on pre-charge bail.

Officers use RUI when they want more time to gather evidence (following the expiration of the 'PACE Clock') and the 'pre-conditions' for pre-charge bail have not been met.<sup>38</sup>

There is no requirement for RUI suspects to report to the police and the police have no power to place conditions on their movements or activities, though some RUI suspects will voluntarily attend further questioning at the request of the police. There are no time limits within which officers must conclude their investigations against RUI suspects and the police are under no obligation to keep them informed about the progress of their investigation.

## 1.5 Detention of those with mental health needs

People with mental health needs may be detained in police custody under PACE because they are a suspect in a criminal investigation or for their own safety (or that of others) under mental health legislation.

### Detention under PACE

The health needs of all people detained under PACE should be assessed when they arrive in police custody. If a person is identified as having health needs, either physical or mental, the police should ensure that they receive appropriate medical attention.<sup>39</sup>

Section 9 of [PACE code C](#) provides the police with statutory guidance on their duty of care to people with health needs in custody. The College of Policing have also published guidance on [detainee care](#) as part of their APP on [detention and custody](#).

### Liaison and diversion

The police should alert their local [NHS liaison and diversion service](#) if they suspect an individual in custody has a mental health problem, including a learning need or substance addiction.

Liaison and diversion services seek to either support those with mental health needs through the criminal justice system or divert them into

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<sup>36</sup> NPCC, [Operational guidance for pre-charge bail and release under investigation](#), January 2019

<sup>37</sup> CPS, Bail: [breach of pre-charge bail conditions](#) [last accessed]

<sup>38</sup> [s37\(7\)\(b\)](#), *Police and Criminal Evidence Act 1984*

<sup>39</sup> Home Office, [PACE code C](#), paragraph 9.5

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treatment, social care service or other relevant intervention or support service.

The College of Policing has issued guidance on [diversion and referral](#) which provides police officers with further information on when and how to refer people with mental health needs to local healthcare provision.

The Government states that liaison and diversion services are available in 92% of police stations. They expect provision to be available in all police stations by the end of 2020/2021 financial year.<sup>40</sup>

### Detention under the Mental Health Act 1983

[Section 136](#) of the *Mental Health Act 1983* allows the police to detain people with mental health needs who appear to be in “immediate need of care or control” in a “place of safety”. If possible, police officers should consult with a suitably qualified medical professional before detaining a person under the *Mental Health Act 1983*.<sup>41</sup>

Section 136 of the 1983 Act was amended by [Part 4, Chapter 4](#) of the *Police and Crime Act 2017* to limit the use of police custody as a “place of safety” for those in a mental health crisis. There is now a presumption that people detained under the 1983 Act are held in specialist provision (i.e. a hospital or care home).<sup>42</sup> However, there are still some limited circumstances in which a police station can be considered a ‘place of safety’.

A police station can only be regarded as an appropriate ‘place of safety’ when:

- the behaviour of the person being detained “poses an immediate risk of serious injury or death” such as no other place than a police station can reasonably be expected to detain the person;  
**and**
- an officer of at least the rank of Inspector has authorised the use of a police station as a ‘place of safety’.<sup>43</sup>

People who are detained at a police station under the *Mental Health Act 1983* must be checked at least once an hour (unless they are sleeping and an assessment has been made not to wake them more than once every three hours) to ensure that they are safe and that their behaviour continues to require their detention at a police station.<sup>44</sup> As soon as there is no longer a need for them to be detained at a police station they should be transferred to another place of safety.<sup>45</sup>

Section 4.17 of government guidance on [the implementation of changes to police powers and places of safety provisions in the Mental](#)

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<sup>40</sup> [PO249321, Offenders: Mental Illness](#), answered 9 May 2019

<sup>41</sup> [s136\(1C\), Mental Health Act 1983](#)

<sup>42</sup> Home Office & Department of Health, [Guidance for the implementation of changes to police powers and places of safety provisions in the mental health act 1983](#), October 2017, paragraph 3.1

<sup>43</sup> [r3, Mental Health Act 1983 \(Places of Safety\) Regulations 2017](#)

<sup>44</sup> [r5\(a\) and r6, Mental Health Act 1983 \(Places of Safety\) Regulations 2017](#)

<sup>45</sup> [r5\(b\), Mental Health Act 1983 \(Places of Safety\) Regulations 2017](#)

[Health Act 1983](#) provides advice on how to manage the safety and welfare of people detained under mental health legislation at a police station.

## 2. The custody estate

The police detain people in 'custody suites'. Most custody suites are situated within large police stations, but some are in dedicated purpose-built buildings. A typical custody suite will consist of several individual cells, separate interview rooms and facilities to 'book in' suspects and log relevant information about their arrest and detention.

Individual police forces decide how many custody suites they need and where they should be located. There is no central record of the number and size of police custody suites. However, using information from official inspection reports and freedom of information releases we can build a rough picture of the custody estate in England and Wales.

There are around **200** custody suites in England and Wales containing around **5,000** custody cells.<sup>46</sup> The average police force has around five custody suites.<sup>47</sup> Custody suites vary in size. Some suites have as little as 10 cells whilst others have more than 50.<sup>48</sup>

Large metropolitan police forces tend to have larger custody estates (and therefore more cells) than the average force. The Metropolitan Police Service has the largest custody estate. As at February 2020 the force had 22 suites containing 565 cells. The force will open two new suites in the summer of 2020 which will take its number of cells up to 607.<sup>49</sup>

There are roughly thirteen forces that have fewer than four custody suites.<sup>50</sup> Two forces, Gloucester Constabulary and the City of London Police, have only one.<sup>51</sup> The fact that the City of London Police has one suite is unsurprising given the small area it polices. Gloucester Constabulary's custody estate is more unique. In 2015 the force closed its three existing suites and replaced them with one purpose built 50-cell custody suite. It now supports its delivery of custody with contingency arrangements with nearby forces.<sup>52</sup>

<sup>46</sup> House of Commons Library analysis of HMICFRS, [Police custody facilities- joint inspections](#) [last accessed 11 September 2019] supplemented with information from Northumbria Police, [Stations and custody suites 263/19](#) [last accessed 11 September 2019] and private correspondents with the Metropolitan Police Service.

<sup>47</sup> Ibid, see also HMIP, [About our inspections: police custody](#), [last accessed 11 September 2019]

<sup>48</sup> Ibid

<sup>49</sup> Information provided through private correspondents with the Metropolitan Police Service. **Note:** the MPS has an additional six 'contingency suites' with three more scheduled to open in the summer of 2020.

<sup>50</sup> House of Commons Library analysis of HMICFRS, [Police custody facilities- joint inspections](#) [last accessed 11 September 2019] supplemented with information from Devon & Cornwall Police, [Disclosure list: Buildings and estates](#): Request no 2654/19 [last accessed 11 September 2019] and Northumbria Police, [Stations and custody suites 263/19](#) [last accessed 11 September 2019]

<sup>51</sup> HMICFRS & HMIP, [Report on an unannounced inspection visit to police custody suites in City of London: 5 - 15 November](#), p5 and HMIP & HMICFRS, [Report on an unannounced inspection visit to police custody suites in Gloucestershire: 27 April – 2 May 2015](#), p5

<sup>52</sup> HMIP & HMICFRS, [Report on an unannounced inspection visit to police custody suites in Gloucestershire: 27 April – 2 May 2015](#), p5

Many forces have arrangements with their neighbours to help them deliver custody. Lincolnshire, Northamptonshire, Nottinghamshire and Leicester have a formal collaboration agreement which supports their delivery of custody.<sup>53</sup> Norfolk and Suffolk Constabularies have completely integrated their custody estate.<sup>54</sup>

## 2.1 The custody environment

Her Majesty's Inspectorate of Prisons (HMIP) and Her Majesty's Inspectorate of Constabulary, Fire & Rescue Services (HMICFRS) [expectations for police custody](#) include an expectation that "detainees are held in a custody suite that is clean, safe and in a good state of repair". HMIP and HMICFRS expect:

- All cells to be equipped with a bell system so that detainees can get the attention of officers if necessary.
- Good maintenance arrangements to be in place.
- Cells to be designed in a way that minimises the risk of attempted suicide or self-harm.
- Practices to be in place when cells have restricted natural light and facilities.
- Custody suite staff to be able to safely evacuate detainees in the event of an emergency.<sup>55</sup>

[PACE Code C](#) sets statutory requirements on police forces for the conditions of detention. This requires custody cells to be

adequately heated, cleaned and ventilated. They must be adequately lit, subject to such dimming as is compatible with safety and security to allow people detained overnight to sleep.

...

Blankets, mattresses, pillows and other bedding supplied shall be of a reasonable standard and in a clean and sanitary condition....

Access to toilet and washing facilities must be provided. This must take account of the dignity of the detainee.<sup>56</sup>

In its 2019/20 Annual Report HMIP reported that "custody facilities were generally clean and well maintained." However, the inspectorate found ligature points in many cells that could be used to self-harm. They also raised concerns that "not enough attention" was being paid to the dignity of detainees particularly with CCTV arrangements.<sup>57</sup>

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<sup>53</sup> HMICFRS & HMIP, [Report on an unannounced inspection visit to police custody suites in Nottinghamshire Police, 1 – 12 October 2018](#), paragraph 1.1, p15

<sup>54</sup> HMICFRS & HMIP, [Report on an unannounced inspection visit to police custody suites in Norfolk and Suffolk, 14 – 25 May 2018](#)

<sup>55</sup> HMICFRS & HMIP, [Expectations for police custody](#), 2012, expectation 6

<sup>56</sup> Home Office, [PACE Code C](#), Note 8.2-8.4

<sup>57</sup> HMIP, [Annual Report 2019–20](#), October 2020, p86-87

## 3. Reforms to the treatment of vulnerable people in detention

Under the Conservative Government 2015-2017, major reforms were made to police detention powers and the way the police manage custody. These reforms were designed to improve outcomes for vulnerable people who may be detained by the police.

Changes were made relating to police custody. Police guidance and training was reformed to emphasise the welfare of vulnerable detainees and legislative reforms were brought forward to restrict the use of police custody against the severely mentally ill.

### 3.1 Why the reforms?

The (then) Home Secretary Theresa May was concerned that too often vulnerable people were being detained in police custody when they should be diverted away from the criminal justice system.<sup>58</sup>

She commissioned two major reports to explore the problem. She asked Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS, then HMIC) to conduct a thematic inspection of the welfare of vulnerable people in police custody.<sup>59</sup> She also asked Dame Elish Angiolini to conduct a review into deaths and serious incidents in police custody.<sup>60</sup>

#### HMICFRS thematic inspection

HMICFRS (then HMIC) identified room for improvement in several aspects of police practice involving vulnerable people in detention.

#### **The provision of liaison and diversion and joint working with other public services**

HMICFRS found "clear evidence that custody could have been avoided for a number of vulnerable adults and children".<sup>61</sup> They identified a "tension" whereby police custody, designed to meet the requirements of the criminal justice system, was playing a "significant role as a function of the health and social care system".<sup>62</sup> HMICFRS argued that the "the lack of sufficient provision from health and social services" meant that many of hours of police time was being taken up with welfare-related activities.

They said that the interaction and cooperation between police services and wider public and protective services "need[ed] to be improved".<sup>63</sup> They said that some public services partnerships were "hindered by the

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<sup>58</sup> Home Office, [Speech: Home Secretary announces review of deaths in police custody](#), July 2015

<sup>59</sup> HMICFRS, [The welfare of vulnerable people in police custody](#), March 2015, p16

<sup>60</sup> Home Office, [Independent report: Deaths and serious incidents in police custody](#), October 2017

<sup>61</sup> HMIC, [The welfare of vulnerable people in police custody](#), March 2015, p18

<sup>62</sup> Ibid, p23

<sup>63</sup> HMIC, [The welfare of vulnerable people in police custody, March 2015](#), p121



range and number of agencies involved".<sup>64</sup> They made a series of recommendations relating to a number of existing partnership working arrangements.<sup>65</sup>

### **Governance and accountability**

Despite finding evidence of leadership teams emphasizing the importance of protecting vulnerable people, HMICFRS said that the police service had not been "effective in bringing about a shared and consistent understanding of vulnerability". They said that "training that would support frontline police officers and custody staff to identify and respond appropriately to the needs of vulnerable people was limited". HMICFRS recommended that the College of Policing (the body responsible for professional standards in policing) review its guidance and training in relation to vulnerable people to help officers de-escalate difficult incidents.<sup>66</sup>

They also raised serious concerns with the way forces were recording information about who came into custody and their time spent there, particularly about the use of force against detainees. They found

no evidence ... of any analysis of trends that might enable police forces to understand how far the use of force was proportionate and safe for the detainees in their custody. Nor was there evidence that forces were monitoring the use of force against BAME or other vulnerable groups.<sup>67</sup>

HMICFRS recommended that the Home Office work with forces to improve data collection about custody.<sup>68</sup>

### **Releasing vulnerable detainees from custody**

HMICFRS found evidence of some proactive work on behalf of forces to prevent vulnerable people from returning to custody. However, they were concerned that the number of vulnerable people repeatedly being detained was high. They recommended that the College of Policing, in collaboration with health and social partners, develop a joint multi-agency approach to working with vulnerable people.<sup>69</sup>

## **Dame Elish's Independent report**

Dame Elish's report was wide ranging and made a total of 110 recommendations to Government, the police, the wider criminal justice system and health care services.

Much of Dame Elish's report focused on the process following a death or serious incident in custody. Many of her recommendations pertained to the investigation of deaths and the support for bereaved families whilst those investigations are ongoing.

However, Dame Elish did make a series of recommendations concerning police practice. She raised concerns with:

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<sup>64</sup> HMIC, [The welfare of vulnerable people in police custody, March 2015](#), p22

<sup>65</sup> Ibid, recommendations 11-15

<sup>66</sup> Ibid, recommendation 6 and 7

<sup>67</sup> Ibid, p22

<sup>68</sup> Ibid, recommendation 2

<sup>69</sup> Ibid, recommendation 8

- **The use of force.** Particularly the use of restraint against those in mental health crisis. Dame Elish found “no consistency” in police practice across England & Wales and advised that police guidance and training be updated to reflect that the use of restraint against those in mental health crisis poses a life-threatening risk.<sup>70</sup>
- **The treatment of people intoxicated with drugs/ alcohol in police custody.** Dame Elish found that drugs and alcohol are a “significant factor in deaths in police custody”.<sup>71</sup> She recommended that the Government consider the viability and cost-effectiveness of introducing ‘drying out centres’ where those under the influence of drugs and alcohol can receive specialist supervision.<sup>72</sup>
- **The use of police stations to detain people for their own (or others) safety under mental health legislation.** Dame Elish said the practice should be “completely phased out”.<sup>73</sup> She argued that health-based provision (including A&E) is much more suitable to meet the needs of those in severe mental health crises. HMICFRS had already recommended in 2013 that the law be amended to ensure police custody was only used as a place of safety in “exceptional circumstances”.<sup>74</sup>
- **The provision of liaison and diversion services and joint working between police and other public services.** Dame Elish said that those with mental health problems should be diverted away from the Criminal Justice System when the seriousness of their offence does not warrant prosecution in the public interest.<sup>75</sup> She concluded that there should be “proper resourcing” of national healthcare facilities to support vulnerable and mentally unwell people who come into contact with the police.<sup>76</sup>

### 3.2 What were the resulting reforms?

There were three key areas of reform:

- **Police powers:** The [Policing and Crime Act 2017](#) amended police detention powers to limit their use against those with mental ill health. Provisions in the [Criminal Justice and Courts Act 2015](#) and the 2017 Act amended police powers to ensure that 17-year-olds are treated as children whilst in police custody.
- **Police practice:** The APP on [Detention and custody](#) was updated, and new training rolled out to officers working in custody. Both emphasised the police role in identifying, protecting and (where appropriate) diverting vulnerable people away from custody. HMICFRS & HMIP are now inspecting police forces against these new standards.

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<sup>70</sup> Ibid, Executive Summary, paragraph 12 & 13

<sup>71</sup> Ibid, paragraph 3.4

<sup>72</sup> Ibid, Summary of Recommendations, recommendation 22

<sup>73</sup> Ibid, Summary of Recommendations, recommendation 25

<sup>74</sup> HMIC, [A Criminal Use of Police Cells? The use of police custody as a place of safety for people with mental health needs](#), 2013, p54

<sup>75</sup> Ibid, paragraph 4.53

<sup>76</sup> Ibid, Box on p79-80

- **Police complaints:** The *Police and Crime Act 2017* also made major reforms to the police complaints system and the way investigations of serious incidents involving the police are carried out. These reforms are discussed in the briefing [police complains and discipline](#).

### Those with mental health needs

[Part 4, Chapter 4](#) of the 2017 Act amended powers in the *Mental Health Act 1983* which allowed the police to detain mentally ill people for their own safety. The reforms restrict the use of a police station as a 'place of safety' for the purposes of detaining a mentally ill person. Subsequent secondary legislation ([The Mental Health Act 1983 \(Places of Safety\) Regulations 2017](#)) provided for rules about how those detained at a police station for their own (or others) safety should be monitored.

The current police powers to detain mentally ill people for their own (or others) safety are set out in [section 1.5](#) of this briefing. In short, police stations can now only be used to detain mentally ill people for their own (or others) safety in exceptional circumstances and requires the authorisation of an officer of at least the rank of Inspector.

### 17-year-olds in custody

[Section 73](#) of the *Policing and Crime Act 2017* completed reform of the legal framework surrounding custody to ensure that 17-year-olds are treated as children. The Government had already, through [section 42](#) of the *Criminal Justice and Courts Act 2015* and changes to PACE Code C, changed the definition of 'juvenile' for the purposes of custody to those under the age of 18 (as opposed to 17). These reforms followed a High Court judgment that found the treatment of 17-year-olds as adults in police custody breached the European Convention on Human Rights and the UN Convention on the Rights of the Child.<sup>77</sup>

17-year-olds, like all children in custody, must now have an appropriate adult with them to help them understand various elements of the custody process (for example, during police interviews and understanding their rights and entitlements).<sup>78</sup>

17-year-olds must now also be treated as a child when bail is refused. This ensures that 17-year-olds are taken into the care of a local authority if they are to be held on remand to await trial (unless specific conditions are met to remand a child in a youth prison or police station).<sup>79</sup>

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<sup>77</sup> HM Government, [Explanatory Notes: Policing and Crime Act: Chapter Three](#), Paragraph 113

<sup>78</sup> Youth Justice Board for England & Wales and HMPPS, *Appropriate adults: guide for youth justice professionals*, December 2014

<sup>79</sup> Youth Justice Legal Centre, [Bail: Information about bail for children](#) [last accessed 20 December]

## Reforms to police practice

Major changes were made to both national police guidance and the national inspection regime to ensure that care for vulnerable detainees is at the centre of police custody practices.

### New APP guidance

In July 2015 the College of Policing issued new Authorised Professional Practice on [Detention and custody](#). The new guidance emphasises the importance of maintaining the wellbeing and dignity of those who come into police custody.

The APP included new guidance on the use of force against detainees. The College said it

...makes it clear that while the use of force and restraint is sometimes necessary to keep everyone in the custody office safe, including detainees, all use of force must be properly recorded. It builds on guidance issued by the Independent Advisory Panel on Deaths in Custody on the risks around restraint and positional asphyxia.<sup>80</sup>

### New inspection regime

HMICFRS (then HMIC) and HMIP reviewed their expectations for police custody, consulted on a new draft of these expectations and revised them as a result. The new expectations:

- extended the scope of the custody inspections to the first point of contact i.e. pre-arrest
- included expectations of diversion from custody for children and vulnerable adults wherever possible
- strengthened the focus on vulnerability and risk throughout
- incorporated expectations flowing from the public sector equality duty under the Equality Act 2010.<sup>81</sup>

The new inspection regime focuses much more on issues raised by HMICFRS and Dame Elish in their reports. For example, HMIP and HMICFRS have revised their methodology to focus more on how detainees under the influence of drugs/ alcohol are cared for.<sup>82</sup>

## 3.3 Have outcomes for vulnerable people improved?

### Deaths in custody

18 people died “in or following” police custody and there were 54 apparent suicides following police custody in 2019/20.<sup>83</sup>

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<sup>80</sup> College of Policing, [New national guidance on detention and custody](#), July 2015

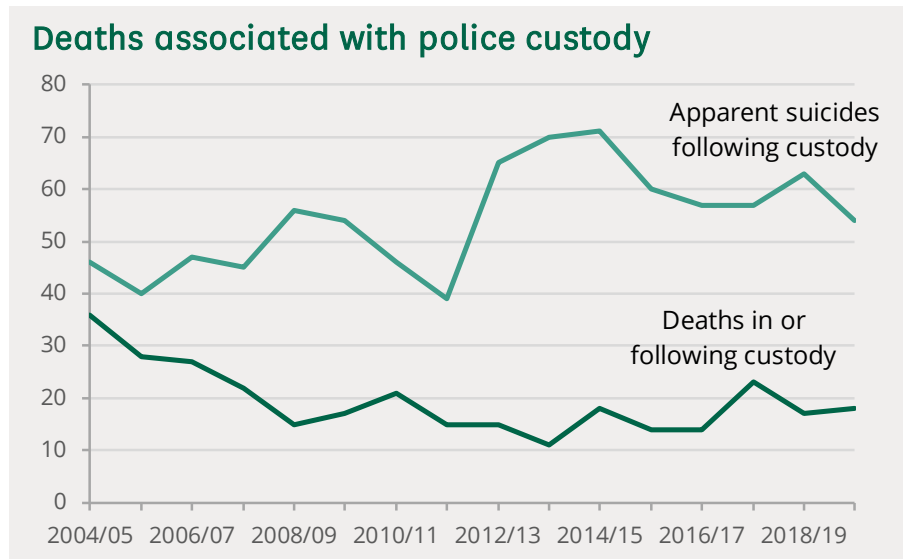
<sup>81</sup> HMIP & HMICFRS, [Expectations for Police Custody – consultation on revised draft](#), October 2015

<sup>82</sup> HMIP, [Annual report 2018/19](#), p70

<sup>83</sup> IOPC, [Deaths during or following police contact: Statistics for England and Wales 2018/19](#), p15

The number of people die “in or following” police custody annually has been fairly consistent since 2012.<sup>84</sup>

The number of people who appeared to have committed suicide following police custody increased sharply between 2011/12 and 2012/13 (from 39 to 65). Since then the number of apparent suicides following police custody has consistently numbered above 50 a year.<sup>85</sup>



Of the 18 people who died “in or following” police custody in 2018/19, 11 were known to have mental health problems and 14 were known to have a link with drugs or alcohol (i.e. they were either intoxicated at the time of their detention or were known to have a substance addiction).<sup>86</sup>

Michael Lockwood, the Director General of the Independent Office of Police Conduct (the body that investigates deaths associated with police conduct), said it was

disappointing that year-on-year we continue to see drug and alcohol abuse and mental health issues feature so prominently. This highlights the need for systemic changes which are beyond the remit of policing.

Far too often officers are left dealing with vulnerable people in mental health crisis or medical emergencies whose needs and risks have not been adequately managed. Police must be properly trained and equipped to recognise vulnerability and manage the risks and challenges they face. But if we truly want to prevent further deaths and harm, we must look beyond policing to resources in community, health, welfare and specialist services.<sup>87</sup>

Deborah Coles, the director of the charity INQUEST (a charity which provides expertise on state related deaths), said...

At a time of real concern about disproportionate and excessive policing, particularly of racialized communities, we still see a

<sup>84</sup> IOPC, [Deaths during or following police contact: Statistics for England and Wales 2019/20](#), October 2020, p14

<sup>85</sup> IOPC, [Deaths during or following police contact: Statistics for England and Wales 2019/20](#), October 2020, p14

<sup>86</sup> Ibid, p15

<sup>87</sup> IOPC, [IOPC Director General comments on annual deaths statistics report 2019/20](#), 22 Oct 2020

disturbing number of restraint related deaths. Mental health and intoxication also continue to feature too heavily. Our casework on police related deaths reveals the systemic failures to safeguard vulnerable people, the excessive use of force and neglect.<sup>88</sup>

### Use of force

HMIP & HMICFRS have remained concerned about the use of force in police custody. In 2018 they wrote to all police Chief Constables to express this concern.<sup>89</sup> In October 2020 they reported that:

- governance for the use of force in custody continued to be weak.
- forces were not correctly recording incidents of the use of force; and,
- evidence that incidents in which officers use force are not critically reviewed.<sup>90</sup>

They said

custody staff generally managed challenging detainees well, and de-escalated many situations effectively without resorting to using force. In the cases we reviewed in depth, including cross-referencing against CCTV footage of incidents where available, any force used was mostly necessary and proportionate to the risks or threat posed, and it was managed well overall. However, we did refer several cases back to forces for learning points, particularly on the poor use of techniques, such as the prolonged restraint of detainees in the prone position.<sup>91</sup>

### Those with mental health needs

HMIP's 2019/20 annual report noted that the

All the forces we inspected, bar one, had seven-day-a-week mental health liaison and diversion provision. Street triage and mental health professionals supporting force control rooms continued to be a valuable resource in diverting vulnerable people with mental health issues from custody if needed. Arrangements for post-custody support for vulnerable detainees were developing in some forces.

However, they still raised some serious concerns about the support for those detained under mental health legislation.

Home Office statistics show a substantial decrease in the use of a police station as a 'place of safety' since legislation was passed to restrict the practice.

159 people were held at a police station under mental health legislation (section 136 of the *Mental Health Act 1983*) in 2019/10. This has fallen from just over 159 people in 2016/17.<sup>92</sup> The proportion of people

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<sup>88</sup> INQUEST, [INQUEST response to latest deaths in police custody statistics](#), 22 October

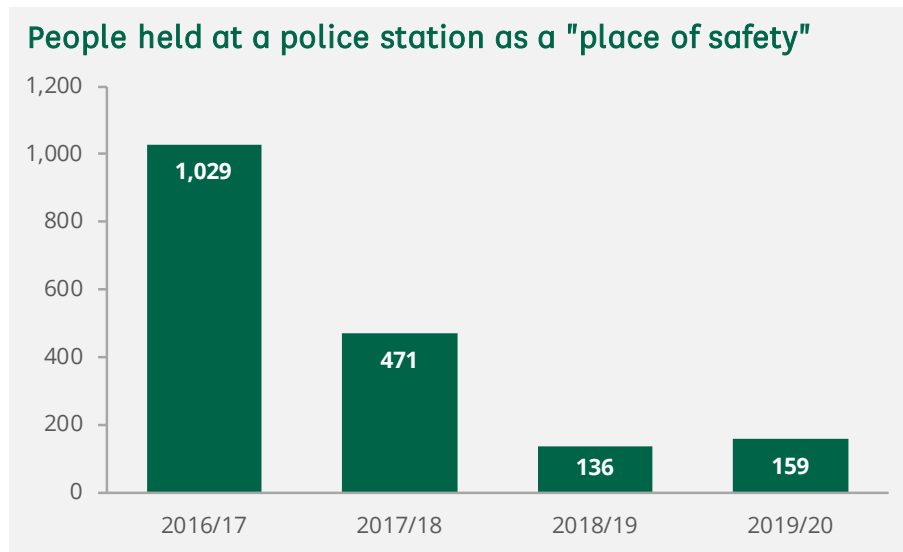
<sup>89</sup> HMIP, [Annual report 2018- 19](#), July 2019, p72

<sup>90</sup> Ibid

<sup>91</sup> HMIP, [Annual Report 2019–20](#), October 2020, p87

<sup>92</sup> Home Office, [Police powers and procedures, England and Wales, year ending 31 March 2020 second edition](#), October 2020, table MHA\_5a

detained under section 136 who are held at a police station has also fallen; from 4% in 2016/17 to 0.5% in the year to March 2019.<sup>93</sup>



However, HMIP reported that they have begun to see people held at a police station whilst they wait to receive a mental health assessment. They said:

The picture was complex, and further complicated by a lack of data and poor recording. If a detainees' wait was so long that their time to be detained lawfully under PACE was running out, the police could apply section 136 to detain and then transfer them to a health-based place of safety. We judged that many such detainees to whom this applied were not well served by mental health services and should have been moved from custody sooner without the use of section 136 powers in this way.<sup>94</sup>

<sup>93</sup> Home Office, [Police powers and procedures, England and Wales, year ending 31 March 2020 second edition](#), October 2020, table MHA\_5a

<sup>94</sup> HMIP, [Annual Report 2019–20](#), October 2020, p89

## 4. Reforms to pre-charge bail

Major reforms to the way suspects are released from police custody were introduced by [Part 4, Chapter 1](#) of the *Policing and Crime Act 2017*. [Section 1.4](#) of this briefing paper explains the current system for releasing suspects from police custody that is the result of these reforms.

The reforms:

- established a presumption against the use of pre-charge bail when suspects are released from custody,<sup>95</sup>
- set “pre-conditions” for when pre-charge bail could be imposed on suspects released from custody<sup>96</sup>; and,
- established a new time limit regime for pre-charge bail that limited the length of time suspects can spend on bail to an initial 28 days.<sup>97</sup>

These reforms were designed to significantly reduce both the number of suspects subject to, and the average duration of, pre-charge bail.<sup>98</sup>

### 4.1 Why were the reforms introduced?

Before the 2017 reforms, almost all suspects that couldn't be charged within their 'PACE clock' were released on pre-charge bail. In 2011 the High Court unexpectedly ruled that time spent on pre-charge bail counted towards a suspect's 'PACE clock'.<sup>99</sup> In effect this judgement placed a restriction on police investigations. Suspects who couldn't be charged within their 'PACE clock' would have to be released without bail and the police would only be able to re-arrest them they could demonstrate they had new evidence to warrant it.

In response to this ruling the Coalition Government introduced emergency legislation ([Police \(Detention and Bail\) Act 2011](#)) to restore the police's powers to bail suspects without affecting their 'PACE clock'.<sup>100</sup> However, the episode highlighted some serious problems with the existing pre-charge bail regime. It became clear that many suspects were being kept on police bail for long periods of time. This was concerning for two reasons:

- It was detrimental to suspects' civil liberties. Suspects could have stringent conditions placed on their lives for long periods without being charged.

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<sup>95</sup> s58, *Police and Crime Act 2017*

<sup>96</sup> Ibid

<sup>97</sup> s47ZD and s47ZG, *Police and Criminal Evidence Act 1984*

<sup>98</sup> Home Office, [Pre-Charge Bail Summary of Consultation Responses and Proposals for Legislation](#), March 2015, p4

<sup>99</sup> [\[2011\] EWHC 1578 \(Admin\)](#), The Queen (on the application of the Chief Constable of Greater Manchester Police) and Salford Magistrates' Court and Paul Hookway

<sup>100</sup> See the Library research briefing [Police \(Detention and Bail\) Bill](#) for details.



- It was encouraging lethargic justice. Both suspects and victims could be waiting months, possibly years, for a case to be resolved following an arrest.

It was hoped that by reducing the use and length of pre-charge bail police investigations would become “more focused”, resulting in “speedier justice” for victims and the accused. The Government also hoped that tighter restrictions on the use of pre-charge bail would protect the human rights and civil liberties of un-convicted suspects.<sup>101</sup>

## 4.2 What has the impact of the reforms been?

There are no official statistics on the use of pre-charge bail or the number of suspects ‘released under investigations’.<sup>102</sup> However, evidence suggests that the use of pre-charge bail has reduced significantly since 2017.<sup>103</sup> In September 2019 the Law Society published analysis of 30 force level FOI returns on their use of pre-charge bail and RUI.<sup>104</sup> The data showed an 84% decrease in the number of people on pre-charge bail between 2016/17 and 2017/18 across the 30 forces.<sup>105</sup>

Whilst the intention of the 2017 reforms was to reduce the use of pre-charge bail, commentators have been surprised by how far the police have decreased their use of the power. Professor Ed Cape (a professor of criminal law at the University of the West of England) and Professor Michael Zander QC (a professor of law at the London School of Economics) have both argued that police officers have likely embraced RUI as an alternative to pre-charge bail to manage an increasing workload.<sup>106</sup> Under the 2017 reforms officers have to regularly apply for extensions to pre-charge bail at a magistrates court. Such conditions do not apply to RUI cases. The Government have confirmed that policing stakeholders think the new pre-charge bail regime has “disincentivised the use of bail”.<sup>107</sup>

Stakeholders from across the criminal justice system have raised concerns that the substantial reduction in the use of pre-charge bail has had a negative impact on both victims and suspects.

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<sup>101</sup> Home Office, [Pre-Charge Bail Summary of Consultation Responses and Proposals for Legislation](#), March 2015

<sup>102</sup> Experimental statistics on the use of pre-charge bail have been published for the last two years. However, these statistics are not comparable and do not cover all police forces. See: Home Office, [Police powers and procedures, England and Wales, year ending 31 March 2018](#), October 2018, Annex B & Home Office, [Police powers and procedures, England and Wales, year ending 31 March 2019](#), October 2019, Annex B

<sup>103</sup> *BBC News*, [Thousands of violent crime suspects released without conditions](#), March 2018 and HMICFRS, [The police response to domestic abuse: An update report](#), February 2019, pp 40- 41

<sup>104</sup> Law Society, [Release under investigation](#), November 2019

<sup>105</sup> Home Office, [Police Powers: Pre-charge Bail, Government consultation](#), February 2019, p27

<sup>106</sup> See: Cape, E, [Police bail without charge – leaving suspects in limbo](#), October 2019 and Zander, M, [Extraordinary shift in the way the police use bail](#), 28 September 2017

<sup>107</sup> Home Office, [Police Powers: Pre-charge Bail Government consultation](#), p10

## Impact on victims

Those in the policing community are concerned that vulnerable victims (particularly victims of domestic abuse) and witnesses are being put at risk because pre-charge bail is not being used to monitor and place conditions on suspects.<sup>108</sup>

Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) found that the number of people being released on pre-charge bail for domestic abuse crimes had "dropped considerably" in the months immediately following the bail reforms (from 119 cases per day in the nine months till March 2017 to 42 cases per day in the three months to June 2017).<sup>109</sup>

HMICFRS raised concerns that without bail conditions domestic abuse suspects can return to the home they share with their victim. Victims and their children were therefore being forced to leave their homes. Without bail conditions, victims find it difficult to prove they need emergency housing or apply for a legal protection order against their abuser.<sup>110</sup>

## Impact on suspects

There is evidence emerging that suspects are being left on RUI for long periods of time. The Law Society has published data on the length of RUI and pre-charge bail cases provided by nine police forces through FOI requests. In eight of these forces investigations against RUI suspects took longer than those against pre-charge bail suspects. Across the nine forces, the average length of pre-charge bail investigations in 2017/18 was 87 days compared to 138 days for investigations against RUI suspects.<sup>111</sup>

The police are under no obligation to keep RUI suspects informed about the progress of their investigations. The Law Society argue that RUI has therefore "simply moved the point of uncertainty [for suspects] to an earlier stage in the process". They say that cases are being "left in limbo" with neither the victim or the suspect having information about what is happening.<sup>112</sup> The London Criminal Courts Solicitors' Association's Vice President said the practice of keeping suspects on RUI for long periods "is making a mockery of justice".<sup>113</sup>

Responses to the Government's pre-legislative consultation on the 2017 reforms did raise concern that releasing suspects under investigation might not lead to "speedier justice" for victims and suspects. Consultation respondents

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<sup>108</sup> NPCC, [Police chiefs guide officers to impose bail conditions protecting victims and vulnerable people](#), May 2019 and HMICFRS, [The police response to domestic abuse: An update report](#), February 2019, p40- 41

<sup>109</sup> HMICFRS, [The police response to domestic abuse: An update report](#), February 2019, p41

<sup>110</sup> Ibid

<sup>111</sup> Law Society, [Release under investigation](#), September 2019

<sup>112</sup> The Law Society, [Justice on Trial 2019: Fixing our Criminal Justice system](#), p9

<sup>113</sup> *The Times*, [Judges 'should force police to justify leaving suspects in limbo'](#), 18 June 2019

...expressed concern that enabling release under investigation would not solve the underlying issue of an extended period of uncertainty for suspects between being arrested and the subsequent decision on charging. Indeed, some respondents were concerned that, without even the minimal level of scrutiny brought by the current process of granting and extending bail, there would be the potential for non-bail cases to take even longer to resolve, with priority given to cases where bail would need to be justified to the courts.<sup>114</sup>

The Law Society have also argued that the use of RUI has increased the workload of criminal defence solicitors. Legal aid payments cover solicitors fees for advice at police stations but they do not generally cover ongoing work such as requesting the police provide updates about investigations of RUI suspects. They have argued that the extra work presented by RUI cases makes

...the work of criminal defence practitioners even more uneconomic than it already is, and acts as a further disincentive for firms to provide legal aided services.<sup>115</sup>

### 4.3 Response

HMICFRS and the National Police Chiefs Council (NPCC- the coordinating body for UK police forces) have taken steps to respond to concerns with the pre-charge bail reforms.

The NPCC introduced [interim operational guidance for pre-charge bail and RUI](#) in May 2019. The guidance reinforces the use of “pre-charge bail as a legitimate tool in investigating crime and protecting the public”.<sup>116</sup>

HMICFRS recommended that all forces review their use of RUI and pre-charge bail by September 2018 and implement any necessary changes.<sup>117</sup>

HMICFRS established a working group consisting of representatives from the NPCC, local forces, and the Home Office to establish how reliable data on RUI and pre-charge bail can be collected. It is hoped that more reliable data will help the parties to better understand the impact of the reforms.<sup>118</sup>

HMICFRS have committed to review the use of RUI and pre-charge bail as part of their annual inspections of the police response to domestic abuse.<sup>119</sup> They have also committed to conducting a thematic inspection

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<sup>114</sup> Home Office, [Pre-Charge Bail – Summary of Consultation Responses and Proposals for Legislation](#), March 2015, p7

<sup>115</sup> Law Society, [Release under investigation](#), September 2019, p5

<sup>116</sup> NPCC, [Police chiefs guide officers to impose bail conditions protecting victims and vulnerable people](#), May 2019

<sup>117</sup> HMICFRS, [State of Policing: The Annual Assessment of Policing in England and Wales 2018](#), July 2019, p103

<sup>118</sup> HMICFRS, [The police response to domestic abuse: An update report](#), February 2019, p40

<sup>119</sup> HMICFRS, [State of Policing: The Annual Assessment of Policing in England and Wales 2018](#), July 2019, p103

of police arrangements for releasing people from custody while still under investigation.<sup>120</sup>

## 4.4 Proposals for further reform

On the 5 November 2019 the Government announced that it was conducting a review of pre-charge bail legislation to ensure the system “prioritises the safety of victims and witnesses and the management of suspects.”<sup>121</sup>

There had already been calls for further legislative reform to pre-charge bail. The Law Society published detailed recommendations in September 2019. They argued that “strict time limits must be introduced to RUI with senior approval required to extend those time limits, mirroring bail requirements.”<sup>122</sup> They proposed an initial authorisation for RUI of 56 days, with extensions up to 6 months requiring the approval of a Chief Inspector or Superintendent, and extensions up to 12 months requiring a Magistrate’s approval.<sup>123</sup> The Law Society have also called on the police to consistently use pre-charge bail when victims or the public could be at risk, more regularly inform RUI suspects about the progress of their case, and collect and publish better data on the use of RUI and pre-charge bail.<sup>124</sup>

The Joint Committee on the Draft Domestic Abuse Bill (the Bill that would become the *Domestic Abuse Bill 2017-19*<sup>125</sup>) recommended in June 2019 that there should be legislation to create a presumption that suspects in domestic abuse cases can only be released from custody on pre-charge bail, unless it is clearly not necessary for the protection of the victim.<sup>126</sup>

### Government proposals

On the 5 February 2020 the Home Office opened a [public consultation on pre-charge bail](#). This consultation asks for feedback on several specific proposals for further reform to pre-charge bail. The consultation closed on the 29 May 2020. In November 2020 the Government said it was “planning to publish our response to the consultation in early 2021”.<sup>127</sup>

The Government is proposing to:

**Legislate to remove the presumption against pre-charge bail.**<sup>128</sup>

**Legislate to define when pre-charge bail is “necessary and proportionate”.** The Government are considering a ‘risk-based’

<sup>120</sup> Ibid, p113

<sup>121</sup> [HCWS94, Pre-charge bail: written statement](#), 5 November 2019

<sup>122</sup> Law Society, [Release under investigation](#), September 2019, p6

<sup>123</sup> Ibid

<sup>124</sup> Ibid

<sup>125</sup> This Bill fell at the 2019 General Election. Following the election the [December 2019 Queen’s Speech](#) included a commitment to reintroduce the Bill

<sup>126</sup> House of Lords House of Commons Joint Committee on the Draft Domestic Abuse Bill, [Draft Domestic Abuse Bill: First Report of Session 2017–19](#), June 2019, paragraph 131

<sup>127</sup> [PQ111529, Domestic Abuse: Victims](#), answered on 18 November 2020

<sup>128</sup> Ibid, p8

approach. They propose pre-charge bail should be used when it is ‘necessary and proportionate’ to safeguard victims, witnesses and the public; prevent further offending; or where the offence in question has significant real or intended impacts.<sup>129</sup>

**Legislate to lower the rank of officer needed to authorise pre-charge bail from inspector to custody officer.**<sup>130</sup> Prior to the 2017 reforms police constables were able to bail suspects from police detention.<sup>131</sup>

**Legislate to amend the current process for pre-charge bail time limits.** The Government asks consultees to provide their view on three different ‘models’ for a new time limit regime for pre-charge bail. Each model would extend the initial ‘applicable bail period’ and delay the point at which a magistrates’ court approves an extension of pre-charge bail. They are outlined in the table below.<sup>132</sup>

Months	Current	Model A	Model B	Model C
1	Initial bail period <b>Inspector</b>	Initial bail period <b>Custody Officer</b>	Initial bail period <b>Custody Officer</b>	Initial bail period <b>Custody Officer</b>
2	First extension <b>Superintendent</b>			
3	Second extension <b>Magistrate</b>	First extension <b>Inspector</b>	First extension <b>Inspector</b>	First extension <b>Inspector</b>
4		Second extension <b>Superintendent</b>		
5	Third extension <b>Magistrate</b>	Third extension <b>Magistrate</b>	Second extension <b>Superintendent</b>	Second extension <b>Superintendent</b>
6			Third extension <b>Magistrate</b>	Third extension <b>Superintendent</b>
7	Fourth extension <b>Magistrate</b>	Fourth extension <b>Magistrate</b>	Third extension <b>Magistrate</b>	Third extension <b>Superintendent</b>
8			Fourth extension <b>Magistrate</b>	Fourth extension <b>Superintendent</b>
9	Continuation of fourth extension <b>Magistrate</b>	Fifth extension <b>Magistrate</b>	Fifth extension <b>Magistrate</b>	Fourth extension <b>Magistrate</b>
10			Fifth extension <b>Magistrate</b>	Fifth extension <b>Magistrate</b>
11				
12				
13				
14				
15				

<sup>129</sup> Ibid, p7

<sup>130</sup> Ibid, p11

<sup>131</sup> [s30A, Police and Criminal Evidence Act 1984 \[as at 01/04/2007\]](#)

<sup>132</sup> Ibid, p12

The Home Office has estimated the potential impact of each model on police investigations. They concluded that 'Model C' would result in the fewest number of pre-charge bail cases requiring magistrates' authorisations. However, they estimated that under 'Model C' magistrate authorisations would still be required in 36% of all rape investigations. Therefore, they concluded that even 'Model C' would not "significantly reduce the number of complex cases that require magistrate oversight".<sup>133</sup>

**Amend the PACE codes to include guidance about how RUI suspects and those who are interviewed voluntarily should be treated.** The Government is proposing a framework for RUI cases that 'mirrors' the timescales for pre-charge bail. However, the police would still have no powers to require RUI suspects report to them and no ability to place conditions on them. This proposed RUI framework would be regulated by police procedure and the courts would play no formal oversight role.<sup>134</sup>

Before issuing or revising a PACE Code the Home Secretary must consult PCCs, Chief Constables, the General Council of the Bar, the Law Society, the Institute of Legal Executives and any other person they "thinks fit."<sup>135</sup> Following this consultation process the proposed Code must be approved by an affirmative resolution of both Houses of Parliament (if it includes substantial changes). This means that both MPs and Lords must be given the opportunity to vote on the proposed Code.<sup>136</sup>

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<sup>133</sup> Home Office, [Home Office, Police Powers: Pre-charge Bail. Government consultation](#), February 2020, p13

<sup>134</sup> *Ibid*, p16

<sup>135</sup> s67(4), *Police and Criminal Evidence Act 1984*

<sup>136</sup> s67(7) & s67(7A), *Police and Criminal Evidence Act 1984*

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