



HMICS HM INSPECTORATE OF
CONSTABULARY FOR SCOTLAND

Thematic Inspection
Care of detained
and arrested children

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ISBN: 978-0-7559-1736-5 (web only)

Her Majesty's Inspectorate of Constabulary for Scotland
St Andrew's House
Edinburgh
EH1 3DG

Produced for Her Majesty's Inspectorate of Constabulary for Scotland by RR Donnelley B56615 06/08

Published by Her Majesty's Inspectorate of Constabulary for Scotland, June, 2008



SUMMARY OF RECOMMENDATIONS

Legislation dealing with the detention, arrest and prosecution (or its alternatives) of children, comprises the Criminal Procedure (Scotland) Act 1995¹ (as amended) and the Children (Scotland) Act 1995² and associated guidelines issued by the Lord Advocate³. We have used this legislation and official guidance, along with a range of other information, to assess current arrangements.

Recommendation 1: That forces adopt a policy where the decision not to liberate the child and instead either cause the child to be kept in a place of safety or retained at a police station, must be endorsed by a police officer of superintendent or higher rank.

Recommendation 2: That forces make sure that whenever a child is held in custody at a police station, as a minimum, a formal review is carried out:

- by custody staff, every four hours
- by a police inspector or higher rank, every eight hours
- by a police superintendent or higher rank, every 24 hours

and that, where appropriate, all these reviews are conducted in consultation with social work or other agency staff. A detailed record of each review should be recorded on the custody system.

Recommendation 3: That forces refer to the certificate required to record the retention of a child in custody at a police station as a child retention certificate (CRC) or child detention certificate (CDC), and provide their respective police boards or authorities with anonymised details of the number of certificates completed on a monthly basis.

Recommendation 4: That forces, in conjunction with the Scottish Police Services Authority (SPSA)⁴, seek to develop a joint training and awareness programme to ensure that the guidelines, relevant legislation and good practice are clearly understood and implemented in Scotland by all those involved in the care of detained and arrested children.

Recommendation 5: That forces engage with the Scottish Police Services Authority (SPSA) to ensure that the National Custody System (NCS) is capable of recording and recalling all actions, issues and incidents involved in the custody process and of providing analytical, investigative and management information on each of these, easily and efficiently.

Recommendation 6: In order to ensure that the best possible response for each child is provided whenever police forces wish the child to be kept in a place of safety, they should work together with local authority social services and/or other agency staff, to implement a process of joint risk assessment, in line with *Getting it right for every child (GIRFEC)*⁵ and promote the sharing of knowledge and expertise.

1 Criminal Procedure (Scotland) Act 1995: www.opsi.gov.uk/acts/acts1995/ukpga_19950046_en_1

2 Children (Scotland) Act 1995: www.opsi.gov.uk/acts/acts1995/ukpga_19950036_en_1

3 Lord Advocate's Guidelines To Chief Constables – Reporting To Procurators Fiscal Of Offences Alleged To Have Been Committed By Children: www.copfs.gov.uk/Resource/Doc/13547/0000235.pdf

4 Scottish Police Services Authority (SPSA): www.spsa.police.uk/

5 Getting it right for every child: www.scotland.gov.uk/Topics/People/Young-People/childrenservices/girfec



While the above recommendations are directed at all forces, we believe that it would be appropriate for the Association of Chief Police Officers in Scotland (ACPOS)⁶ to take the lead in all these matters, through its criminal justice business area.

We also feel that full and properly co-ordinated engagement of the police, the social work profession⁷, other partners and stakeholders and the parents or guardian of the child in question, would improve the care provided to detained and arrested children.

Notwithstanding, HMICS⁸ will continue to review the performance of individual forces in considering how these recommendations have been addressed.

6 Association of Chief Police Officers in Scotland (ACPOS): www.acpos.police.uk/

7 Criminal Justice Social Work Services (Social Work): www.scotland.gov.uk/Topics/Justice/criminal/16910

8 HMICS: www.scotland.gov.uk/Topics/Justice/Police/15403



Introduction

1. In Scotland, the law states that a person under the age of 16 years is a child. Some older people between 16 and 18 years who are already under supervision are also treated as children for the purposes of the relevant legislation discussed in this report.
2. It seems to be a widely held view that the behaviour of many children today as they approach their mid-teens can appear to be more mature than teenagers of the past, and even the offensive behaviour of some teenagers can appear to be more akin to adult offensive behaviour than to the misconduct of children. However, the law properly acknowledges that there must be recognition of immaturity and of the under-developed sense of responsibility of young people. No matter how outwardly mature, self-confident or even aggressive some teenagers can appear, there is always a strong possibility that this masks or is caused by real or imagined insecurity, fear, inadequacy and all of the other challenges of adolescence. The Scottish system of dealing with troubling or troubled children by diverting them from the criminal justice system has arisen from a recognition of all these things and has been justifiably admired across the developed world.
3. It is therefore important that those children who come into police hands, for whatever reason, are dealt with by police officers in accordance with the letter and spirit of this legislation and guidelines.
4. It is particularly important for the police service to provide specific care to children who are either detained or arrested and brought into police custody at a police station. The purpose of this inspection was to examine the processes, practices, procedures and protocols in place to enable forces to do this.
5. In a recently published report on custody facilities⁹, we noted that the safety and welfare of all people who come into police custody is a significant responsibility for the police service in Scotland. The risks must therefore be mitigated by high standards of custody facilities and robust operating procedures. This is equally important when dealing with children, for whom special arrangements are in place.
6. This inspection in particular looked at training, understanding of relevant legislation and associated guidelines, and how police forces in Scotland¹⁰ work together with partners and stakeholders to provide for children in these circumstances.
7. The decision to conduct this inspection arose from our consultation and risk process for identifying and prioritising topics for scrutiny. Our previous statutory responsibility for dealing with people who were dissatisfied with the way in which police forces had handled their complaints also provided evidence, through two separate cases, that there seemed to be organisational misunderstanding of the relevant legislation and official guidance in this area.

9 HMICS Report on Custody Facilities: www.scotland.gov.uk/Publications/2008/03/28152100/o

10 Scottish Police Forces: www.scottish.police.uk



8. Our inspection methodology is described briefly in Annex B, but further details on both of these processes can be found on our website¹¹. We are aware of other work in progress in the field of child care and support, and of the need for more effective preventative, diversionary and rehabilitative practices for children who are involved in, or at risk of being involved in, offending.

9. This new approach has been developed jointly with a range of partners and is set out in the document *Preventing Offending by Young People – A Framework for Action*. The framework sets out the shared direction for driving forward work to tackle offending by young people and is underpinned by the principles of *Getting it right for every child* (GIRFEC).

10. However, this inspection focused specifically on the period when children are brought into custody and are held at a police station until a decision is taken on how their cases are to be dealt with.

11. An increasing number of rulings of the European Court of Human Rights¹² have acknowledged the special vulnerability and rehabilitative needs of young offenders. Recognition of this vulnerability is reinforced by the United Nations Convention on the Rights of Children¹³, which contains ‘articles’ relating specifically to the protection of children in custody. Any misuse of the relevant legislation or the guidelines leaves the police service in Scotland, its partners and its stakeholders, open to criticism and potential litigation.

12. This inspection found scope for improvement within the police service in Scotland in terms of understanding and implementing the practices, policies, procedures and protocols concerning the care of detained and arrested children. One of the main concerns arising was the inappropriate retention of children in custody outwith the guidelines and relevant legislation. Another was the difficulty experienced by police forces when the local authority is unable to identify a suitable place of safety. While the former is a matter for the police service itself, the latter depends on co-operative partnership, primarily between the police and social work services, at both executive and practitioner level.

13. The remainder of this report provides details of our findings.

NOTE: It is not uncommon for children detained and arrested by police to be either intoxicated or in need of other medical attention. This matter will be covered in a pending HMICS report on the provision of medical care to persons in police custody, and will therefore not be discussed further in this paper.

11 HMICS: www.scotland.gov.uk/Topics/Justice/Police/15403

12 European Convention on Human Rights (ECHR):

www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols

13 UN Convention on the Rights of the Child (UNCRC): www.unhcr.ch/html/menu3/b/k2crc.htm



KEY ISSUES

Development of the Statutes and the Guidelines

14. Legislation relating to the detention, arrest, prosecution or referral to the children's reporter¹⁴ of children alleged to have committed a crime or offence includes:

- the Criminal Procedure (Scotland) Act 1995 (CP(S)A 1995), Sections 14, 15, 17, 42(1) and (9) and 43 (as amended by Crime & Punishment (Scotland) Act 1997), and
- Children (Scotland) Act 1995, Sections 45(4) - (7), 53(2) and (3), 54, 63, 82.

Section 42(1) of the CP(S)A 1995 (as amended), directs that "*no child under the age of 16 years shall be prosecuted for any offence except on the instruction of the Lord Advocate, or at his instance*".

15. To avoid the need for the police service to consult about each individual case, the Lord Advocate has issued guidelines to Chief Constables on when police should report a child alleged to have committed an offence to the procurator fiscal. Children who are not reported will be dealt with by the children's reporter.

Authority to Retain

Criminal Procedure (Scotland) Act 1995, Section 43

16. This legislation requires that when a child is apprehended and cannot immediately be brought before a sheriff, either a police officer of the rank of inspector or above, or the officer in charge of the police station, shall enquire into the case and may release the child either on a written undertaking or unconditionally.

17. The Act also makes it clear that a child should be liberated other than in exceptional circumstances.

A person shall not be liberated where:

- *the charge is one of homicide or other grave crime;*
- *it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or*
- *the officer has reason to believe that his liberation would defeat the ends of justice.*

18. Where a person who is apparently a child having been apprehended is not liberated as mentioned above, the police officer [of the rank of inspector or above] shall cause him to be kept in a place of safety other than a police station until he can be brought before a sheriff unless the officer certifies:

- *it is impracticable to do so;*
- *he is of so unruly a character that he cannot safely be so detained; or*
- *by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him.*

and the certificate shall be produced to the court before which he is brought (attached to the police report to the procurator fiscal).

¹⁴ Children's Reporter: www.scra.gov.uk/home/index.cfm



19. The police officer is required to formally record the decision to hold the child in custody at a police station, on what is commonly, but erroneously, referred to as an ‘unruly certificate’.

Lord Advocate’s Guidelines to Chief Constables on the reporting to procurators fiscal of offences alleged to have been committed by children

20. Under the provisions of the Lord Advocate’s Guidelines, children are to be reported to the procurator fiscal for certain categories of offences. In general terms, this means the following:

- offences which require by law to be prosecuted on indictment or which are so serious as normally to give rise to solemn proceedings on the instructions of the Lord Advocate in the public interest;
- offences alleged to have been committed by children aged 15 years or over which in the event of conviction oblige or permit a court to order disqualification from driving;
- offences alleged to have been committed by children as described in section 93(2)(b)(ii) of the Children (Scotland) Act 1995 (children aged 16 or 17 years who are subject to a supervision requirement); and
- breaches of anti-social behaviour orders allegedly committed by children aged 12-15 years.

21. There is a presumption that offences falling outwith these categories will be reported to the children’s reporter. However, the police are not precluded from reporting to the procurator fiscal offences alleged to have been committed by children, where they are of the opinion that, for special reasons which must be stated in the report, prosecution might be considered.

22. Section 43 of the CP(S)A 1995 refers to the situation where it is intended that the child will be brought before a Sheriff (i.e. reported to the procurator fiscal and proceeded against). It follows then that the provisions of the CP(S)A 1995 and its associated guidelines do not cater for the keeping or retaining in custody of children who are not to be prosecuted in court. Therefore the same arrangements and options for holding such children in places of safety are not available to the police service and its partners.

23. In effect there is no mechanism for keeping a child in custody to appear at a children’s panel, unless he or she is initially reported to the procurator fiscal and then referred to the children’s reporter or is the subject of an apprehension warrant issued by the panel. Therefore, any child not being reported to the procurator fiscal must be released and reported to the children’s reporter in terms of the Children (Scotland) Act 1995.

Child Protection Legislation

24. Sections 57 and 61 of the Children (Scotland) Act 1995 allow for application to be made, to a sheriff or justice of the peace respectively, for a child protection order i.e. an order to remove to a place of safety a child who *“is being so treated or neglected that he is suffering significant harm or will suffer such harm if he is not removed to and kept in a place of safety, or if he does not remain in the place where he is then being accommodated (whether or not he is resident there)”*.



25. The Scottish system for dealing with child offenders or troubled children is very much motivated by the need to protect young people and though there may be underlying child protection issues when children come into police custody, they are usually there primarily as a result of their offending behaviour. In these circumstances, the legislation on child protection orders is not particularly useful.

Use of the legislation by the police service in Scotland

26. Looking at how the police service in Scotland has interpreted and implemented the legislation, we found a mixed picture. Some forces showed a clear understanding of the legislation and associated guidelines, and had translated these into published partnership protocols. Others seemed uncertain still about the circumstances under which a child should and could be retained in a place of safety.

27. During the inspection we found that a significant number of children were being kept in custody for relatively minor offences that did not fall within the guidance. These cases were not extraordinary and did not involve circumstances which would have required to be reported to the procurator fiscal, nor did they merit the child being held in a place of safety before his/her appearance before a sheriff.

28. Fortunately, in most forces such instances were relatively rare. However, to make sure that the guidelines and legislation are complied with at all times, we propose that the decision to retain a child in a place of safety in terms of section 43 of the CP(S)A 1995 be formally endorsed by a police officer of superintendent or higher rank. The same officer should also endorse any decision to retain a child in a police station, in accordance with the relevant legislation. It would not be necessary for the officer to endorse these requests in person at a police station. Instead, his or her verbal decision could be recorded on the custody system and, if appropriate, on the certification document.

29. British Transport Police (BTP)¹⁵ already operate a national policy in relation to the authorisation of taking of DNA samples and plans to replicate this process when obtaining a superintendent or higher rank's endorsement to retain a child in a place of safety.

30. Some forces may deem it appropriate for the matter to be discussed with an officer of chief inspector rank before contacting the superintendent or higher ranking officer. We would not criticise this if implemented in any local policy. However, the final decision to retain a child in a place of safety or at a police station should always be endorsed by an officer of at least superintendent rank.

31. Such occasions should be very rare in future and, in any case, we anticipate that the superintendent on-call would normally wish to be informed of the exceptional circumstances leading to a child being retained in custody in accordance with the guidelines and legislation, such as being arrested for rape or homicide.

¹⁵ British Transport Police (BTP): www.btp.police.uk



Recommendation 1: That forces adopt a policy where the decision not to liberate the child and instead either cause the child to be kept in a place of safety or retained at a police station, must be endorsed by a police officer of superintendent or higher rank.

Review Process

32. During this inspection we learned that the majority of forces had experienced significant problems when attempting to identify a place of safety for a child. Operational teams were able to provide evidence of occasions where ‘out of hours’ or ‘on-call’ social work personnel had been reluctant or unable to assist.

33. Should a child need to be kept in a place of safety, every effort must be made to accommodate him/her somewhere other than at a police station. Where necessary, efforts to do so should carry on throughout the period of retention. In these situations police staff should pursue the matter through regular contact with the social work service, even when initial attempts to find accommodation by this method have been unsuccessful.

34. It should be recognised that the decision to hold a child in custody at a police station is a significant event and, as we have recommended, should lead to an officer of at least superintendent rank being notified. Without exception, the assessment and review of such a decision must involve continual, extensive and formal deliberation, both internally and in conjunction with the social work service and any other relevant agencies.

35. At the same time, the circumstances leading to the child’s detention in compliance with the guidelines and relevant legislation will be open to subsequent change, e.g. an alternative place of safety may be found or the child’s previous unruly behaviour may diminish or disappear. It is therefore crucial that forces have a formal review structure, the findings of which are recorded in detail on the custody system. Details to be captured might include the following:

- adherence to the guidelines and relevant legislation;
 - efforts made to trace and notify parent or guardian;
 - access to child by parent or guardian;
 - endorsement by a police superintendent and the nature of contact with that officer;
 - any comments by the social work department and/or other agency staff;
 - the attendance of social work and/or other agency staff;
 - joint police/social work/other agency risk assessment;
 - eventual release for citation or liberation on undertaking to parent/ guardian or other suitable person;
 - efforts made to identify a place of safety away from a police station; and
 - the completion of a certificate citing justification, by both police and social work staff, for detention in a police station, including endorsement of same by a police superintendent.
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36. As stressed above, efforts to find a place of safety away from a police station must be continuous and must be recorded in detail on the custody system. Records should include any negative outcomes, as these will serve to prove that officers made sustained efforts to find alternative accommodation, even where they failed to do so.

37. While the review and assessment of holding a child in police custody must be a continuous process, we feel that, as a minimum, the circumstances should be formally reviewed every four hours by custody staff (or as prescribed under legislation e.g. the Terrorism Act 2000, where a person's detention must be periodically reviewed by a review officer during the initial period of detention).

38. In addition to this, we believe that, as a minimum, a police inspector or officer of higher rank from that force should formally review the situation every eight hours. This itself should be supplemented by a formal review, at least every twenty-four hours, by a police superintendent or higher ranking officer from that force. These reviews should be carried out in consultation with social work professionals or other agency staff where appropriate. As before, the police superintendent would not have to be present at the police station to carry out the review of the situation although this would be the preferred option.

39. During our fieldwork, one senior procurator fiscal suggested that duty procurators fiscal would appreciate early notification of any children held in police custody to allow preparation for the child's appearance before a sheriff. Subsequent discussions with Crown Office representatives revealed general support for this proposal with the suggestion that the practicalities and processes for this be arranged at a local level.

Recommendation 2: That forces make sure that whenever a child is held in custody at a police station, as a minimum, a formal review is carried out:

- by custody staff, every four hours
- by a police inspector or higher rank, every eight hours
- by a police superintendent or higher rank, every 24 hours

and that, where appropriate, all these reviews are conducted in consultation with social work or other agency staff. A detailed record of each review should be recorded on the custody system.

Child Retention Certificate

40. As explained earlier, a police officer is required to record the decision to hold a child in custody at a police station formally on a form currently referred to as an 'unruly certificate'. Unfortunately, we found occasions of children being held in custody outside the terms of the relevant legislation and guidelines, simply because of their unruly behaviour. Indeed we commonly came across the term, "*he was kept on an unruly*", during the inspection.

41. We feel that the term 'unruly certificate' only serves to confuse matters and should no longer be used: a view that was endorsed during our consultations with forces and partner agencies. Preferred alternatives included 'child detention certificate' (CDC) or 'child retention certificate' (CRC). We note that some forces have already replaced the 'unruly certificate' title with either a CDC or CRC and whilst we would have preferred forces to have maintained a national standard, we believe that either option is feasible. For the avoidance of confusion with partner agencies across Scotland we suggest



that the police service decides which of these terms to adopt universally, even if it means that this is achieved over a period of time to allow stationery to be changed etc.

42. We believe that this simple change will serve to highlight the true purpose of the certification. As before, while a police officer of or above the rank of inspector or the officer in charge of the police station will be required to sign the certificate, the decision to hold a child should be endorsed by a police officer from that force, of or above the rank of superintendent. To introduce a further, independent check, we suggest that forces provide anonymised details of the number of certificates, and the reasons for these being issued, to their police boards or authorities on a monthly basis. This information could also be drawn to the attention of their independent lay custody visitors.

Recommendation 3: That forces refer to the certificate required to record the retention of a child in custody at a police station as a child retention certificate (CRC) or child detention certificate (CDC), and provide their respective police boards or authorities with anonymised details of the number of certificates completed on a monthly basis.

Enhanced Training

43. While the legislation and guidelines are relatively clear and concise, we found that some forces and individual officers were nevertheless clearly confused about applying the following criteria together in cases where two or more of these were being considered:

- the criteria for deciding when a child could be reported to the procurator fiscal;
- the criteria for deciding whether or not a child could be kept in a place of safety; and
- the further criteria for deciding whether a child could be kept in police custody.

44. Even more concerning was the fact that it seemed to be a regular occurrence in some forces that the second and third courses of action were being considered for children accused of committing offences which would not be reported to the procurator fiscal.

45. During our early research for this inspection we established that the working practices of the children's reporter, the legislation and the guidelines had all been developed from the content and wording of the Kilbrandon Report¹⁶ published in 1964. Moreover, some of the terminology in the Kilbrandon Report could itself be traced back further, to the Children and Young Persons (Scotland) Act 1937¹⁷.

46. The principles of the Kilbrandon Report are still relevant today and continue to underpin the approach taken towards troubled and troubling children in Scotland. However, we believe that it would be useful to review the appropriateness of the language used, given the misunderstanding shown by the police service in some cases and the challenges now facing modern Scottish society. We also feel that more detailed definitions of ambiguous terms, such as 'grave crime', 'depraved' and 'liberation would defeat the ends of justice', would greatly help operational officers and their managers.

16 Kilbrandon Report: www.scotland.gov.uk/Publications/2003/10/18259/26879

17 Children and Young Persons (Scotland) Act 1937: www.legislation.gov.uk/RevisedStatutes/Acts/ukpga/1937/cukpga_19370037_en_1



47. Evidence that some forces had correctly understood, and were adhering to the legislation and guidance, could be discerned from their own internal guidelines, policies, standard operating procedures and training material. However, we believe that the clearest indicator of this is the percentage of detained or arrested children who were subsequently kept in police custody under an ‘unruly certificate’. Bearing in mind the limited ability of forces’ computerised custody systems to generate these data, the percentage of occasions on which these detentions occurred appeared to range from under 1% in some forces, to over 14%. In our opinion, this divergence emphasises the point that the legislation and guidelines are not interpreted and implemented consistently across the service.

48. As a consequence, we met with representatives from Crown Office and Procurator Fiscal Service (COPFS) to discuss our initial views. We were pleased to find COPFS receptive to the prospect of revisiting the current Lord Advocate’s Guidelines for the purpose of identifying whether they can be revised to assist in securing greater consistency in their application and to ensure that their current aims continue to be met. COPFS has also agreed to work with partners to assist with the development of any planned training and awareness programme. We are grateful to all those involved in COPFS for their support on this matter.

49. Another area in which force practices differed was custody training. Here we observed little consistency in terms of either the material taught or the length of course. Nevertheless we did find examples of good practice throughout the service, including some innovative projects around training, as described in Annex A.

50. While the police service in England and Wales runs a custody training course specifically focused on the Police and Criminal Evidence Act 1984 (PACE)¹⁸ and tailored to newly promoted uniform sergeants, no such training was available in Scotland. During our fieldwork, a group of custody practitioners and managers representing all of the eight Scottish forces told us that they would welcome the introduction of a formal, national custody training programme. Unfortunately, any extension to the initial leadership and development programme would require officers to be abstracted from their forces for a longer period. This, and the fact that there are currently five different automated custody systems in use across Scotland, makes devising a generic national training course, at this time, a difficult prospect. ACPOS has a stated intention that all forces will adopt the same custody system in due course, and this has recently been piloted by Dumfries and Galloway Constabulary.

51. For the future, we believe that a custody training programme designed nationally but for local implementation, might usefully be considered for adult and child custody care and management. We therefore propose that, following consultation with the ACPOS personnel and training business area and thereafter, if approved, with the Scottish Police Services Authority (SPSA), police forces work together to carry out a training needs analysis to identify and address current shortfalls in custody training and then ask the SPSA to procure whatever training is identified as necessary. This training could be modular to ease the abstraction considerations.

¹⁸ The Police and Criminal Evidence Act 1984: www.police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/



52. The only current custody training provided centrally through the Scottish Police College (SPC) in relation to the legislation or guidelines relating to children in police custody, was for probationary police officers. Its format was limited to academic study only, with no specific practical exercises to reinforce the operational consequences of the subject.

53. We feel that this situation clearly ought to be addressed as a matter of urgency, with the creation of a training plan to introduce practical scenarios, specifically tailored to highlight the content of the guidelines and relevant legislation for all police officers and police staff involved in the arrest and detention of children.

54. We would suggest that the ACPOS National Custody Forum (see Annex A) seek to promote a specific training and awareness package now for all relevant personnel on the legislation and guidance, as well as on good practice in the care of children in police custody (as highlighted in this report and also identified by the forum itself). The forum should present a case to ACPOS personnel and training business area and thereafter, if approved, work with the SPSA to procure that training and awareness package. Once developed, internal training staff in each force could ensure that everyone who needs to, receives the training. Partners and stakeholders involved in the care of detained and arrested children should also be active participants in the training. This might include representatives from the Association of Directors of Social Work (ADSW)¹⁹, COPFS, the Scottish Children's Reporter Administration (SCRA)²⁰, Scotland's Commissioner for Children and Young People (SCCYP)²¹, the Scottish Association for the Care and Rehabilitation of Offenders (SACRO)²² and other voluntary agencies. We have identified named individuals from the above organisations who are willing and able to become involved in this project.

Recommendation 4: That forces, in conjunction with the Scottish Police Services Authority (SPSA), seek to develop a joint training and awareness programme to ensure that the guidelines, relevant legislation and good practice are clearly understood and implemented in Scotland by all those involved in the care of detained and arrested children.

National Custody System (NCS)

55. At the time of the inspection, as noted above, a National Custody System (NCS) was being piloted in Dumfries and Galloway Constabulary. It will not, however, be available to all forces for a number of years.

56. As part of our evidence-gathering process, we asked each of the forces for the following management information:

- number of children detained or arrested;
- number of children subsequently retained in a place of safety;
- number of CDC's or CRC's (formerly 'unruly' certificates) issued;
- length of time these children were held in a police station; and
- number of children held in a place of safety with the assistance of the social work profession.

19 Association of Directors of Social Work (ADSW): www.adsw.org.uk

20 Scottish Children's Reporter Administration's (SCRA): www.scra.gov.uk/home/index.cfm

21 Scotland's Commissioner for Children and Young People (SCCYP): www.sccyp.org.uk/

22 Scottish Association for the Care and Rehabilitation of Offenders (SACRO): www.sacro.org.uk/



57. Unfortunately, the limited and differing abilities of individual custody systems meant that forces could not readily provide comparable information. Faced with a similar set of questions in 2006 from the then Scottish Executive²³, forces had been able to provide only a limited response. Adverse comment was made at that time regarding the specification and capability of the custody systems. However, in response to our request even the NCS, supposedly a more advanced system, could not easily generate the data. We were advised that a time-consuming manual review of the records would be necessary to respond fully to our questions, and in some instances forces provided estimated rather than actual statistics.

58. We believe that this information is the type of management information that forces and their police boards or authorities should themselves wish to monitor in order to understand their performance. For this reason we were disappointed to find that it was not readily available.

59. It is our considered judgement that the NCS should have a detailed audit facility and be capable of recording and recalling all actions, issues and incidents involved in the custody process. The system should also be able to provide, easily and efficiently, analytical, investigative and management information on every related action, issue and incident in the custody process.

Recommendation 5: That forces engage with the Scottish Police Services Authority (SPSA) to ensure that the National Custody System (NCS) is capable of recording and recalling all actions, issues and incidents involved in the custody process and of providing analytical, investigative and management information on each of these, easily and efficiently.

Identification of a Place of Safety

60. As previously highlighted, a common problem for forces was finding a place of safety in which to hold a child in accordance with the legislation and guidelines. During office hours, we were told, police were able to contact relatively senior representatives from the social work departments of local authorities if difficulties arose. However, outside office hours, and especially during the weekend, the initial point of contact for the police was more junior 'on-call' or 'out of hours' staff.

61. Only one force, Tayside Police, had overcome this problem, by establishing a partnership protocol²⁴ that enjoyed the active support of the force's chief constable and Dundee City Council's chief executive and director of social work. Indeed, during the final inspection period, social work staff met every one of that force's requests for a place of safety.

62. As also discussed earlier, there should only be a small number of children for whom the guidelines and legislation are relevant, and it is these critical few for whom a place of safety is required. Demand for such places had been artificially high previously, due to the high number of requests made erroneously because they did not meet the legal criteria. It is understandable, then, that social work staff had found it difficult or inappropriate to accommodate all of these. However, when the retention is lawful and appropriate it is crucial, for the benefit of the child, that all parties work together to identify a suitable place of safety away from a police station.

23 Scottish Government: www.scotland.gov.uk/

24 Tayside Joint Protocol: www.dundee.gov.uk/reports/reports/145-2004.pdf



63. Although the legislation requires the police to cause a child to be retained “in a place of safety other than a police station”, there is no positive statutory requirement for the social work profession to provide a place of safety. Indeed we have been advised that some secure facilities are reluctant to accept certain high risk children because of their duty of care to the young people already under their supervision. There is also no effective national overview or system to monitor and review the availability of places of safety in Scotland.

64. In 1964 the Kilbrandon Report proposed a collaborative approach to identifying places of safety, suggesting regional solutions in preference to local action. Encouragingly, we found that several organisations with responsibility for secure accommodation in Scotland have done precisely this. Together they have designed a web-based service²⁵ to provide up-to-date information on placements in secure accommodation. A review of the website showed that this service was still in the early stages of development, but we are hopeful that, once fully implemented, it will realise its clear potential.

65. Implementation of recommendations 1 and 2 in this report should ensure that children arrested or detained by police are only ever held in places of safety in accordance with the legislation and guidelines. Whenever this type of placement of a child happens, we believe that both a police officer of superintendent or higher rank and a senior social work manager should be notified of the seriousness of the offence. This is because of the strong possibility that the child could be remanded in custody following his or her court appearance.

66. We also believe that the implementation of recommendations 1 and 2 will result in fewer occasions when such accommodation is needed. Social work partners have, in the past, rightly questioned the validity of some of the requests made by forces for a place of safety and recommendations 1 and 2 should ensure that only appropriate requests are made in future. The recent rise in the provision of places of safety for various purposes, coupled with a greater understanding of the legislation and guidelines, should result in a far more effective working relationship between the agencies involved in this particular aspect of dealing with troubled or troubling children.

67. We therefore propose that forces work with social work colleagues and ADSW to review jointly the processes, policies, procedures, structure and guidance for responding to police requests for places of safety. In this context we commend the protocol developed by Tayside Police and Dundee City Council.

68. Other good practice observed during our inspection included the attendance of a member of social work staff or one of their partner agencies (such as SACRO, Barnardo’s²⁶ or Includem²⁷) at a police station when a child is taken there in custody, to do the following:

- engage in a joint risk assessment process;
- share knowledge and expertise, provide visible support to the child while in the police station, and potentially the parent or guardian; and
- work together, and more effectively, to find a place of safety where these are needed.

²⁵ Secure Accommodation Network Scotland: www.sanscotland.org/

²⁶ Barnardo’s: www.barnardos.org.uk

²⁷ Includem: www.includem.org/



69. We believe that this is good practice and that all police forces should seek to secure agreement on such a policy with all of the local authorities²⁸ in their force areas, at the very least for those children whose presence in a police station continues beyond the short length of time necessary to process an arrest/detention and arrange for release into the care of a parent or guardian.

70. Secure accommodation may not always be required where a place of safety is required and consideration should be given to accommodation with appropriate relatives or friends. Clearly these options would require formal assessment by both police and social work.

71. We would like to highlight at this point that, unless there are exceptional circumstances, the parent or guardian of a detained or arrested child must be notified of the circumstances and permitted access to the child without delay. The presence of a parent or guardian generally acts as a positive influence but more importantly allows the police to meet a basic human right of the child – i.e. to be treated fairly. Children in police custody may not actually want a parent/guardian present but police officers and staff must act in their best interests and secure that presence as soon as possible.

72. When a child is liberated to their parents or guardian, the police and/or social work should ensure that their responsibilities to that child are fully explained.

73. If, for whatever reason, it is impossible to find a place of safety for a child, the presence of the social work or partner agency professionals would at least serve to demonstrate a force's commitment to providing a professional response which is more child-focused than offence-focused. We would also suggest that the attendance of all those involved be recorded on the custody system, along with details of the efforts made to identify a place of safety.

74. We also believe that it would be good practice for police boards or authorities to seek to involve their lay custody visitors in ensuring that legislation, guidelines and good practice are followed in relation to:

- decisions concerning the detention or arrest of a child;
- decisions concerning the placement of a child in a place of safety following police arrest/detention;
- decisions concerning the retention of a child in a police station; and
- the care of any children in police custody.

75. This may require additional training for lay visitors as well as some alerting arrangement for them when an arrested/detained child is brought into a police station.

²⁸ Convention of Scottish Local Authorities (COSLA): www.cosla.gov.uk/



76. During our fieldwork, we were told of concerns about the volume of police time taken up by transporting children to and from places of safety. While we understand these tensions, we believe that such matters are best resolved locally between forces, the social work profession and other caring agencies. This, and any other potential areas of conflict, should be raised and discussed as part of the recommended joint training and awareness programme for forces and their partners.

Recommendation 6: In order to ensure that the best possible response for each child is provided whenever police forces wish the child to be kept in a place of safety, they should work together with local authority social services and/or other agency staff, to implement a process of joint risk assessment, in line with *Getting it right for every child (GIRFEC)*²⁹ and promote the sharing of knowledge and expertise.

29 Getting it right for every child: www.scotland.gov.uk/Topics/People/Young-People/childrenservices/girfec/Background



Annex A

GOOD PRACTICE

1. During the fieldwork we saw many examples of good practice in the care of detained and arrested children. Some of these are referred to in the main body of this report or reflected in our recommendations. In addition, the following paragraphs raise some further points which practitioners and planners may wish to consider when reviewing their approaches.

Tayside Joint Protocol

2. A number of forces had drawn up a partnership protocol, similar to Tayside's joint protocol, with the intention of keeping to a minimum the number of children held at police stations. In Tayside, the effectiveness of its partnership with social work colleagues was demonstrated by the fact that the force was able to find a place of safety, away from a police station, for all of the small number of children retained under the guidelines and relevant legislation during the final period examined. Forces and their partners may wish to consider Tayside's approach when seeking to improve their own arrangements.

Third Party Support

3. With the exception of Tayside Police, all forces expressed some concern about the responses of social work colleagues to requests for places of safety. However, a number also told us that they would normally have a member of social work or other care agency staff present to provide support to the child. As a minimum, forces should expect a care agency member to be represented at the police station whilst efforts to trace a place of safety are being made and thereafter make regular and appropriate reviews at the police station if the child has to be retained at that police station.

Record of Consultation with Social Work

4. Lothian and Borders Police maintain a formal record of all consultations with social work staff relating to the retention of a child in police custody. The record is attached to the formal certificate of retention (CDC or CRC) which accompanies the report to the procurator fiscal.

Third Party Training

5. Both Tayside and Lothian and Borders Police involve external partners, such as COPFS, social work departments and SCRA, in their training programmes on guidelines and legislation.

Review and Approval of Retention by a Police Superintendent

6. Central Scotland Police already requires the retention of a child in a place of safety to be endorsed by an officer of at least superintendent rank. In Fife Constabulary all custodies are reviewed by a police superintendent or higher ranking officer. Recommendations 1 and 2 of this report advocate that all forces in Scotland adopt this good practice.





Training Re-certification

7. Re-certification of staff working in the custody process in Tayside Police is dependent upon their satisfactory completion of refresher training every three years. We would support a similar re-certification process being applied in any future national training package.

Practical Scenarios

8. Strathclyde Police's training syllabus uses practical scenarios to help explain guidelines and legislation through real life situations. We see value in this approach being incorporated in the recommended national training and awareness programme.

Force Review

9. Commendably, Strathclyde Police have actioned an internal review of their processes, practices, procedures and protocols in relation to the care provided to detained and arrested children. The Force has published a memorandum to all divisional commanders providing clear and concise guidance around the detention and arrest process. The guidance is supported by an effective decision flowchart which could be adopted as good practice through the recommended joint training and awareness programme for forces. The Force's review is still ongoing but already it has achieved a significant reduction in the number of children retained in custody.

Record of Supervision Order

10. Children who are between the ages of 16 and 18 and who are, because of their offending behaviour, subject to a supervision requirement of a children's hearing (in accordance to Section 93(2) of the Children (Scotland) Act 1995), are deemed to be a child for the purposes of the relevant legislation. Some forces record this information on the Scottish Intelligence Database (SID) and/or the Criminal History System (CHS), to ensure that the child's status is recognised at an early stage of the custody process. This good practice should be considered by all forces.

National Custody Forum

11. The National Custody Forum (NCF), chaired by ACPOS, was originally established to oversee the development and implementation of the National Custody System (NCS) in Scotland. Through time the NCF's agenda has developed to engage and address a wide range of custody-based topics and issues. We were impressed by the knowledge, commitment and enthusiasm displayed by the members of the NCF who, as a group, have made a considerable and valued contribution to this thematic inspection. We see merit in allowing the NCF to develop further and propose that two separate fora be established to address the custody agenda from an executive and practitioners level.



The Youth Justice National Liaison Group

12. The Youth Justice National Liaison Group was formed following the publication of the Youth Justice Improvement Programme³⁰ to specifically consider issues arising as young people move out of the children's hearing system and onto the criminal justice system. The group has high level representation from COPFS, ACPOS, SCRA and ADSW with the specific remit to:

- review and improve current practice in relation to youth justice issues, particularly in relation to the transfer of persons between the child and adult justice systems;
- establish shared objectives and understandings of the issues relevant to youth justice; and
- ensure that effective information sharing and exchange is taking place between agencies.

13. This group has considered and drafted an agreement between procurator fiscals and authority reporters where cases are reported jointly to both. Additionally this group is considering the information that needs to be retained on police and criminal history systems (CHS) and shared between agencies to ensure that effective decision making can be achieved. This includes where information should be stored about 16 and 17 year olds who are on supervision requirements on welfare grounds so that the police can easily access this information.

³⁰ Youth Justice Improvement Programme: www.scotland.gov.uk/Publications/2006/10/09094901/0



Annex B

METHODOLOGY AND ACKNOWLEDGEMENTS

1. HMICS thematic reports are prepared after careful, but focused inspection of the subject matter. Our broad methodology is explained on our website. The shorter reports now produced contain far less detailed evidence than has been presented in past thematic inspection work. This is a deliberate effort on our part to present accurate, but concise and focused reports on a wider range of issues.
2. The project initiation document (PID) was adapted from our standard inspection format, based on the EFQM model and circulated to forces. An initial questionnaire was also circulated, the product of which provided the core information for our fieldwork.
3. Following an initial consultation exercise and desktop research, we held a seminar involving all eight police forces in Scotland and including representatives of the Association of Chief Police Officers in Scotland, Association of Scottish Police Superintendents³¹, Scottish Police Federation³², Scottish Police Services Authority and UNISON³³.
4. We also liaised with the Crown Office and Procurator Fiscal Service, the Scottish Children's Reporter Administration, Scotland's Commissioner for Children and Young People, the Association of Directors of Social Work³⁴, HMIC for England and Wales and the Metropolitan Police Service.
5. Our report focuses on the main business areas underpinning the six recommendations. In addition to these recommendations and opportunities for further improvement, significant areas of 'good practice' are described in Annex A.
6. The inspection was carried out by Detective Superintendent Eddie Thomson, assisted by Sergeant Bruce Fyfe (on short term secondment from Grampian Police) under the direction of Paddy Tomkins QPM, HM Chief inspector of Constabulary for Scotland. We are grateful to all forces, partners and stakeholders for their valuable assistance. We would especially like to extend our gratitude to: Police Inspector Lyn Ross from Grampian Police, Ms Kellie Hannah from Fife Constabulary and Mr Jim Burke from Fife Social Work who were particularly helpful to us during the initial stages of the inspection, and to T/ACC Ewan Stewart of Grampian Police who supported our engagement in the various strands of the National Custody Forum.

31 Association of Scottish Police Superintendents: www.scottishpolicesupers.co.uk/

32 Scottish Police Federation (SPF): www.spf.org.uk/

33 UNISON Police Support Staff Council (PSSC) Scotland: www.unison-scotland.org.uk/police/index.html

34 Association of Directors of Social Work: www.adsw.org.uk/
