

The Rt. Hon Amber Rudd MP  
Secretary of State for the Home Department  
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Wednesday 3 January 2018  
Twitter: @CustodyVisiting

Dear Home Secretary,

**Women Detainees in Police Custody  
Revision of Code C, Police and Criminal Evidence Act 1984**

The Independent Custody Visitors Association (“ICVA”) is a Home Office and Police and Crime Commissioner (PCC) funded organisation, which leads, supports and represents PCC-led volunteer schemes designed to make unannounced visits to police custody to check on the rights, entitlements, wellbeing and dignity of detainees and which work to hold Chief Constables to account.

We work closely with government and criminal justice organisations to contribute to initiatives to improve conditions in police custody.

We are members of the UK National Preventive Mechanism (UKNPM) required by the Optional Protocol against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and designed to strengthen the protection of people deprived of their liberty.

a) The dignity of women in the cells

We are concerned by evidence emerging from the work of visitors that the needs of menstruating women in police custody are routinely ignored.

These concerns are reflected in the reports of Her Majesty’s Inspectorate of Constabulary and the Fire and Rescue Services (“HMICFRS”) and its predecessors on a range of forces in England and Wales.

Women are frequently left without the assistance of female officers, without access to adequate and hygienic sanitary protection, or facilities for washing and changing; and inadequate consideration is given to menstruation by officers in the exercise of detainees’ risk management. At its most stark, this can mean women left in paper suits without their underwear and without sanitary protection.

It is our view that current practice – on the information available to us – may violate the protections guaranteed to women by the Equality Act 2010, the Human Rights Act 1998 (Articles 3, 8 and 14) and the ordinary public law. Current failings appear to fall short of our international obligations to women, including as provided in the Convention on the Elimination of Discrimination against Women (“CEDAW”) and the Beijing Rules on the treatment of women in custody.

We have obtained an initial counsel’s opinion in this matter from Caoilfhionn Gallagher QC and Angela Patrick of Doughty Street Chambers, which we enclose for your consideration. We are making that advice and this correspondence public in order to inform our work with Parliament and individual forces.

#### b) The responsibility of the Secretary of State

We ask that you exercise your powers as Secretary of State for the Home Department, with responsibility for the standards in the Police and Criminal Evidence Act 1984 (“PACE”) on the treatment of detainees in police custody to:

- a. Conduct a full equality impact assessment of the current national policy and practice on detention, women and sanitary protection, including as reflected in Code C to PACE, for compliance with Section 149, Equality Act 2010 and the public sector equality duty (“PSED”); and
- b. Exercise your powers under PACE to amend Code C to make express provision for the treatment of menstruating women as a group of detainees requiring special provision, including to ensure access to appropriate sanitary protection, to private and hygienic facilities for changing, to women officers; and to ensure that menstruation is considered with sensitivity during strip- searching and the removal of clothing to manage risk.

We consider that revisions to Code C should include, as follows:

- a. During the booking-in process:
  - i. Women detainees should be asked by a custody sergeant about their needs in private;
  - ii. Women detainees should automatically be provided with a female officer point of contact and an opportunity to speak to them at any time during detention;
  - iii. A hygiene pack should be provided automatically to all women detainees, and it should be made clear to detainees that further sanitary products are available from custody officers and the designated female officer; and
  - iv. A fresh pack should be offered without request after every 6 hour period in custody.
- b. Adequate hand-washing facilities must be made available to all women detainees to allow for the regular hygienic changing of sanitary protection.
- c. Cells subject to CCTV monitoring should routinely provide for sufficient pixellation of toilet areas to allow for sanitary protection to be changed unobserved by officers, or alternative arrangements made for detainees to change in private.

- d. If the technology available does not provide for such adequate pixellation, alternative arrangements should be made for menstruating women to have access to private facilities for changing sanitary protection.
- e. Detainees should be made aware that they will not be observed when changing their sanitary protection and/or using the toilet.
- f. In conducting a strip search (or in any circumstances where a detainee's clothes are removed), sensitivity to the needs of menstruating women should be shown. Tampons should only be rarely removed, and only ever where proportionate and necessary in light of the purpose of the search.
- g. In the very rare event that the removal of sanitary protection is necessary, an appropriate replacement should be provided to the woman detainee as soon as any search is complete with replacement clothing if required, together with access to private and hygienic conditions to allow the sanitary protection to be used.
- h. Where the removal of a detainee's clothes is considered necessary to meet any assessed risk of self-harm, or any other risk, the removal of sanitary protection should be subject to specific and individual risk assessment.
- i. It will rarely be justified to leave a menstruating woman in custody without access to appropriate sanitary protection. Alternative tools for risk management, including close, frequent or constant observation, should be used to meet any risk of self-harm connected with the presence of sanitary protection.

No woman or girl should be left in indignity by police officers for want of a difficult conversation or an inexpensive box of tampons.

#### c) Next steps

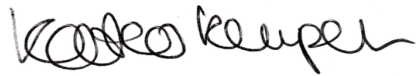
We have sent a copy of this letter to the Minister for Women and Equalities, in light of her responsibility for Government policy on women's rights and equality. We consider that you share responsibility for the legality of the treatment of women detainees while in the custody of individual police forces in England and Wales, and specifically, the compatibility of that treatment with the Equality Act 2010 and the Human Rights Act 1998.

We have also copied this correspondence to the Chair of the Equality and Human Rights Commission, which exercises statutory duties in connection with the enforcement of the Equality Act 2010 and the protection of Convention rights pursuant to the Human Rights Act 1998.

Swift action is necessary to ensure that the dignity of women and girls is protected adequately by the guidance offered nationally to individual officers and police forces. We are working with the National Police Chiefs' Council (NPCC) lead on custody ACC Nev Kemp to promote and share good practice. However, appropriate treatment of menstruating women must be covered in the PACE Codes in order to protect vulnerable female detainees and to ensure that good practice is embedded in the statutory framework.

We would be grateful for the opportunity to meet with you to discuss this matter within the next four weeks in order for us to work together to resolve this issue.

Yours sincerely,



Katie Kempen  
Chief Executive  
Independent Custody Visitors Association



Martyn Underhill  
Chair  
Independent Custody Visiting Association  
Custody lead for the Association of Police and  
Crime Commissioners (APCC)

Cc: Justine Greening MP, Minister for State for Women and Equalities;  
David Isaac, Chair, Equality and Human Rights Commission.

Enc: Legal Opinion, Caoilfhionn Gallagher QC, Angela Patrick, Doughty Street Chambers, 21  
December 2017.