

Report to: Police Authority
Date: 5 February 2020
Agenda Item: 6.2
Subject: Custody
Sponsor: Chief Executive
Author: Head of Governance and Compliance and Governance Manager
For: Information and discussion

1. Purpose of paper

- 1.1 This paper has been prepared to ensure that Members have a clear understanding of the Authority's duties and responsibilities in respect of custody oversight. It also gives assurance on the current arrangements for delivering these.
- 1.2 This paper is to be taken in partnership with the presentation from BTP which provides detail on the current BTP custody estate and performance in this area.

2. Legislative background

- 2.1 The key pieces of legislation in respect of custody are:
 - Police and Criminal Evidence Act 1984
 - Police (Health and Safety) Act 1997
 - Police Reform Act 2002
 - Corporate Manslaughter and Corporate Homicide Act 2007
- 2.2 The Police and Criminal Evidence Act Code C sets out the requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody by police officers and was last updated in August 2019. Compliance with Code C is monitored through the following routes:
 - operational level - by the Force's monthly custody meeting chaired by T/Supt Paul Langley and attended by the Authority's Governance Manager.
 - strategic level - custody is a standing item at BTP's Audit, Risk, Inspection and Compliance Board which is chaired by the

Deputy Chief Constable on a monthly basis and attended by the Authority's Finance, Audit and Risk Manager.

- Authority level – quarterly updates will be reported to the Performance and Delivery Committee.
- HMIC Inspection – HMIC conduct unannounced custody inspections for every force at least once every six years. BTP was inspected in January 2020 and further information is provided later in the paper and in BTP's presentation on the outcome.

2.3 The Police (Health and Safety) Act 1997 applies the Health and Safety at Work Act 1974 to all police officers. As the legal employer of the officers and staff under the direction and control of the Chief Constable, the Authority is legally responsible for ensuring, *so far as reasonably practicable*, the health, safety and welfare at work of these individuals¹. The day-to-day health and safety responsibility for officers and staff under the direction and control of the Chief Constable is delegated to the Chief Constable under section nine of the Code of Governance. Compliance is reported to, and assessed by, the Audit & Risk Assurance Committee. The relevance to custody is that it can be a high-risk area for officers and staff but also to recognise that once a member of the public is in BTP's detention BTP(A) is ultimately responsible for their health and safety.

2.4 The Police Reform Act 2002 places a statutory duty on local policing bodies (i.e. police and crime commissioners) to make arrangements for and maintain panels of Independent Custody Visitors (ICVs). Whilst the legislation does not extend this duty to the Authority (most likely an oversight) the Authority approved its own ICV scheme in 2008 at its then Stakeholder Relations and Communications Strategy Committee to ensure public confidence and transparency in BTP's use of custody. The Scheme has been in place since this time and is discussed in further detail in the next section.

2.5 The specific duties under the Police Reform Act, which are fulfilled through the Authority's ICV Scheme, are to:

¹ Section 2(1) Health and Safety at Work Act 1974 c.37

- Make arrangements for detainees to be visited by persons appointed under the ICV arrangements.
 - Keep ICV arrangements under review from time to time and revise as appropriate
 - Appoint ICVs independent of the local policing body and force.
 - Confer the powers they consider necessary on ICVs.
 - Abide by the code of practice as issued by the Secretary of State with regard to the carrying out of their functions.
- 2.6 The Corporate Manslaughter and Corporate Homicide Act 2007 decrees that an offence is committed under this Act where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care owed to the organisation's employees or members of the public, which results in death. The maximum penalty is an unlimited fine. Publicity orders requiring the organisation to publish details of its conviction and fine can also be served.
- 2.7 The Authority as the legal entity and oversight body has a clear responsibility under this Act, as well as the Chief Constable. The Act is clear that a relevant duty of care is owed to a person who, by reason of being a person detained at a custodial institution or in custody area at a court a police station or customs premises, is someone for whose safety the organisation is responsible². As such, Members need to be satisfied that sufficient oversight arrangements are in place in respect of custody.

3. Independent Custody Visitors

- 3.1 The Authority delivers Independent Custody Visiting (ICV) for BTP in partnership with local policing bodies, principally the Mayor's Office for Policing and Crime (MOPAC), in the areas that BTP has custody. In practice, this means that BTP facilities are serviced by our partners existing panels on the Authority's behalf. The intention is for these Panels to report back to the Authority's Performance and Delivery Committee on a quarterly basis.

² S2(1)(d) and S2(2)(a)

- 3.2 BTP has several custody facilities but currently only uses its Brewery Road (B-Div North) site on a full-time basis. More detail will be provided on BTP's facilities, usage and statistics in BTP's presentation to be taken alongside this paper.
- 3.3 The Authority has an agreement with MOPAC in place setting out minimum standards for visiting frequency for each facility, reporting procedures, a provision for an annual review of the service received and any charge to the Authority for the provision of this service. Charges will cover administration costs incurred by the partner organisation such as recruitment, training, resources, insurance, report production, staffing time and volunteer expenses.
- 3.4 Recognising the importance of the work of the ICV scheme, the Authority has recently reviewed its agreement with MOPAC and is seeking to enhance its oversight function in this area. This involves attending the monthly Force Custody meetings.
- 3.5 MOPAC have raised some issues in respect of responsiveness from the Authority and BTP in resolving issues identified by ICVs. This will be dealt with via the governance arrangements described at paragraph 2.2 above.
- 3.6 The London ICV Scheme is part of the national system of independent custody visiting that forms the United Kingdom (UK) National Preventative Mechanism (NPM). The NPM was established to ensure regular visits to places of detention in order to prevent torture and other ill-treatment, as required by United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) to which the UK is a signatory. The Scheme adheres to the Home Office's National Code of Practice and to the Independent Custody Visiting Association (ICVA) Quality Assurance Framework. In respect of BTP facilities, MOPAC's Islington Panel conducts unannounced visits on a weekly basis at Brewery Road and annual visits to the mothballed facilities are completed by the relevant panels in those areas.

4. HMICFRS Inspection January 2020

- 4.1 Her Majesty's Inspectorate Constabulary Fire & Rescue Services (HMICFRS)'s programme requires each force's custody to be inspected every six years by unannounced inspection. This inspection took place for BTP between Monday 6 January and 16 January 2020.
- 4.2 BTP's presentation will go into more detail on this but some key messages following the initial debrief were that:
- The current staffing arrangements for the Brewery Road facility were not satisfactory. This was something that the Force was aware of and are working to resolve.
 - Custody staff showed genuine kindness and care towards the detainees but needed to improve their record keeping.
 - Reference was made to an effective ICV scheme being in place – with the only issue being the responsiveness to issues raised by the ICVs on occasion.
 - The report was positive in respect of BTP's approach to safeguarding and dealing with vulnerable people.
- 4.3 The final report will be published in the next six months.

5. Conclusions

- 5.1 The Executive will continue to monitor custody performance. The Authority is committed to the principles of ICV as it provides transparency and promotes public confidence in the police and will work to help improve responsiveness.
- 5.2 The Executive will review the current oversight arrangements for custody with a view to strengthening this area, particularly at committee level.

6. Recommendations

- 6.1 To note this report for information and discussion.
- 6.2 Agree that a paper on the wider Authority oversight of the legitimate use of police powers be taken at a future meeting.