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## A Criminal Use of Police Cells?

The use of police custody as a place of safety for people with mental health needs

**A joint review by Her Majesty's Inspectorate of Constabulary, Her Majesty's Inspectorate of Prisons, the Care Quality Commission and Healthcare Inspectorate Wales to examine the extent to which police custody is used as a place of safety under section 136 of the Mental Health Act 1983**

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ISBN: 978-1-78246-147-0

## Acknowledgements

We are grateful to the following police forces and NHS trusts in England and Wales for their assistance with our field work:

Kent Police  
Lancashire Constabulary  
Leicestershire Constabulary  
Metropolitan Boroughs of Lewisham and Bromley  
Norfolk Constabulary  
North Wales Police  
Suffolk Constabulary  
Sussex Police

Betsi Cadwaladr University Health Board  
Oxleas NHS Foundation Trust  
Kent and Medway NHS and Social Care Partnership Trust  
Lancashire Care NHS Foundation Trust  
Leicestershire Partnership NHS Trust  
Norfolk and Suffolk NHS Foundation Trust  
Sussex Partnership NHS Trust

We are also grateful to a number of individuals and organisations who have been part of the report's reference group. In particular, we would like to thank the following organisations for their support:

Association of Chief Police Officers  
Central Scotland Police  
Department of Health  
Her Majesty's Inspectorate of Constabulary for Scotland  
Independent Advisory Panel on Deaths in Custody  
Lothian and Borders Police  
Rethink Mental Illness  
Royal College of Psychiatrists

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## Executive Summary

*“What have I done to deserve this? I was ill; I was locked up because I was ill.”*

Person detained in police custody  
under section 136 of the Mental Health Act 1983

Police officers have many different roles: to protect life and property; to maintain order; to prevent the commission of offences; and, where an offence has been committed, to take measures to bring the offender to justice.

In the course of their work, police officers often deal with people suffering from mental health problems. If an officer believes that someone is suffering from a mental disorder in a public place, and that person is in immediate need of care or control, section 136 of the Mental Health Act 1983 (section 136) provides the authority to take the person to a “place of safety”, so that his or her immediate mental health needs can be properly assessed.<sup>1</sup>

A person can be detained in a place of safety for up to for 72 hours<sup>2</sup> while waiting to be examined by a doctor and interviewed by an Approved Mental Health Professional (AMHP),<sup>3</sup> who decides if treatment is needed, and, if so, whether it should be administered in a hospital or elsewhere (for example, at home, with care provided by a community mental health team).

The *Code of Practice for England* and the *Code of Practice for Wales*<sup>4</sup> each state that a police station should be used as a place of safety only “on an

<sup>1</sup> A “place of safety” is defined in section 135(6), Mental Health Act 1983 as: “residential accommodation provided by a local social services authority under Part III of the National Assistance Act 1948; a hospital as defined by [the Mental Health Act]; a police station; an independent hospital or care home for mentally disordered persons; or any other suitable place the occupier of which is willing temporarily to receive the patient.”

<sup>2</sup> Mental Health Act 1983, section 136(2).

<sup>3</sup> An AMHP is a social worker who has undergone training in mental health issues and who has been approved by the local authority to undertake duties under the Mental Health Act 1983.

<sup>4</sup> We have adopted the phrase “Codes of Practice” to refer to both Codes, unless specifically indicated otherwise.

exceptional basis”,<sup>5</sup> or “in...exceptional circumstances”,<sup>6</sup> respectively.<sup>7</sup> However, data, previous studies and national joint inspection work of police custody provision show that, in some areas, police custody is being **regularly** used as a place of safety. For example, in 2011/12, more than 9,000 people were detained in police custody under section 136, while 16,035 were taken to a hospital.

Those detained under section 136 have not committed any crime; they are suspected of suffering from a mental disorder. They may be detained for up to 72 hours, without any requirement for review during this period. In contrast, a person arrested for a criminal offence may generally only be detained for up to 24 hours,<sup>8</sup> with their detention regularly reviewed to ensure that it is still appropriate.

We wanted to examine why, despite guidance, codes of practice, and recommendations made in earlier studies, police custody continues to be used so frequently.

*“I was discharged by the mental health crisis team as a low risk to myself and others and not requiring follow-up. I am concerned that my section 136 detention [in police custody] will show up on an enhanced criminal record checks [sic] in the future.”<sup>9</sup>*

Person detained in police custody  
under section 136 of the Mental Health Act 1983

<sup>5</sup> *Code of Practice for England: Mental Health Act*, Department of Health, 2008. Paragraph 10.21.

<sup>6</sup> *Code of Practice for Wales: Mental Health Act*, Welsh Assembly Government, 2008. Paragraph 7.21.

<sup>7</sup> For the purposes of this report, we use the phrase “on an exceptional basis” to refer to both paragraph 10.1 of the *Code of Practice for England*, and paragraph 7.21 of the *Code of Practice for Wales*.

<sup>8</sup> Police and Criminal Evidence Act 1984, section 41.

<sup>9</sup> The Disclosure and Barring Service checks and includes information held locally by police forces on an individual that is reasonably considered relevant to the post for which he or she has applied.

## About this review

This review:

- examines the extent to which police custody is used as a place of safety under section 136; and
- identifies the factors which either enable or inhibit the acceptance of those detained under section 136 into a preferred place of safety, such as a hospital or other medical facility.

The joint inspection was carried out by Her Majesty's Inspectorate of Constabulary (HMIC); Her Majesty's Inspectorate of Prisons (HMIP); the Care Quality Commission (CQC); and Healthcare Inspectorate Wales (HIW).

It focused on the following six areas:

- **police use of section 136:** why are people detained under section 136, and how often and why is police custody used as a place of safety?
- **strategic oversight and direction among partner agencies:** how far are oversight and direction ensuring the appropriate use of section 136, and generating better adherence to the Codes of Practice?
- **multi-agency working:** how effectively are the police service and health partners working together?
- **recording and monitoring the use of section 136:** how are data collected, used and shared between partners?
- **training:** are all staff aware of policies and procedures regarding the use of section 136?
- **the perspectives of those detained under section 136:** what are their views on their time in police custody?

Fieldwork took place during May and June 2012, and comprised inspection of seven police forces (Kent; Lancashire; Leicestershire; Norfolk; North Wales; Suffolk; and Sussex), two Metropolitan Police boroughs (Bromley and Lewisham), and the associated mental health trusts. In each area, we interviewed police and health staff; reviewed policies and protocols on the use

of section 136; and examined a sample of custody records in respect of people who had been detained under section 136.<sup>10</sup> We also spoke to a number of people who had been detained and taken into police custody as a place of safety.

## Key findings

### Police use of section 136

We found that police custody was still being used as a primary or secondary place of safety.<sup>11</sup> Its use varied between the areas we visited, from 6% to 76% of the total number of people detained under section 136.

In many cases, the reason why police custody was used as a place of safety was not documented in police custody records. When it was recorded, the most common reasons were:

- insufficient staff at the health-based place of safety;
- the absence of available beds at the health-based place of safety;
- the person had consumed alcohol; or
- the person was displaying violent behaviour, or had a history of violence.

Although they had not committed a crime, those detained under section 136 who were taken to a police station were generally treated like any other person in respect of the booking-in procedure; risk assessment; and, ultimately, being locked in a cell (rather than being taken to another part of the station).

In our sample of custody records, the majority of individuals were detained between 6pm and 9am, that is, out of office hours. The average time that each person spent in police custody was 10 hours 32 minutes.

<sup>10</sup> Except in Lewisham and Bromley, where there were insufficient records.

<sup>11</sup> Paragraph 10.22 of the *Code of Practice for England* states: “[a] police station should not be assumed to be the automatic second choice if the first choice place of safety is not immediately available.” Paragraph 7.20 of the *Code of Practice for Wales* states: “[s]ave in certain circumstances, it is not acceptable for a police station to be the first option as a place of safety, or an automatic option in cases where more suitable accommodation is not immediately available.”

We were told that section 136 was not used lightly by officers. Those whom we met spoke with sincerity when they expressed the view that police custody was not an appropriate place for those appearing to suffer from a mental disorder.

### **Strategic oversight and direction**

All the areas we visited had strategic partnerships in place.<sup>12</sup> However, some were better established than others, and the partnerships' ability to offer vision and leadership around compliance with the Codes of Practice varied. It was clear that where local champions were driving the agenda, significant improvements had been made.<sup>13</sup>

### **Multi-agency working**

Under the Codes of Practice, areas should have a clear multi-agency policy governing all aspects of the use of section 136. All the areas we visited had joint policies and protocols in respect of section 136; however, the standard and breadth of these policies varied. We found evidence of some excellent partnership working, but the extent of the involvement of mental health crisis teams varied between areas.

### **Recording and monitoring the use of section 136**

Data are published annually on the use of health-based places of safety. However, there is no corresponding national monitoring of, and therefore data on, the use of police stations as places of safety.

We found a mixed picture in respect of the collection and sharing of information between agencies about individuals who had been detained under section 136. Some excellent arrangements for the recording and accessing of information regarding previous police involvement with vulnerable people were in place. However, better use should be made of police IT and intelligence systems in the recording of information about those detained under section 136. This

<sup>12</sup> These are fora where representatives from the police, health and other partner agencies analyse data on the use of section 136; identify good practice; and agree plans to address any issues.

<sup>13</sup> A local champion is an individual at force level with responsibility for sharing best practice on the use of section 136, and ensuring compliance with the relevant Code of Practice.

information could also help frontline police officers when they are dealing with individuals who have previously been detained under section 136.

### **Training**

We found gaps in knowledge around section 136 and local procedures, especially among health staff, who were not always trained in these areas. Some forces had produced flowcharts to assist officers; but not all staff to whom we spoke knew about them.

The main training tool for police officers was online learning; however, there were variations regarding who had completed this training. Staff to whom we spoke said that they would value multi-agency, face-to-face training.

### **The perspective of those detained under section 136**

Many of those detained remarked that their experience had made them feel like criminals, and they described many aspects of the custody process as de-personalising. Some, however, told us of the kindness that they had experienced when in custody, and there was a recognition that, whilst they believed their time in detention was not necessary, they were treated in a humane and sensitive manner.

## Recommendations

1. The Codes of Practice should be amended to bring detention times for those detained in police custody under section 136 in line with those in the Police and Criminal Evidence Act 1984, which allows up to 24 hours in police custody (out of the maximum of 72 hours for which they can be detained overall). The period of detention should be subject to regular, independent reviews by both police and health officials, to ensure that:
  - action is taken to transfer the detained person to a health-based place of safety as soon as is practicable; or
  - an assessment is carried out as soon as possible at the police station, where any transfer to a health-based place of safety may cause unnecessary delay.

Any assessments which are needed once the 24-hour period in police custody has elapsed, should be undertaken in a hospital.

2. A data field should be added to the Mental Health Minimum Data Set held by the Health and Social Care Information Centre to collect data on each occasion when:
  - an individual brought by police to a health-based place of safety is not accepted into that health-based place of safety, stating the reason why he or she remained in police custody; and
  - a person under the age of 18 years is brought to and/or received into a health-based place of safety under section 136.

The information collected by the Welsh Government should also include the above data, and the current national form used to record section 136 detentions should be amended accordingly.

3. The College of Policing, the Royal College of Psychiatrists, the College of Social Work, police forces and mental health service providers should work together to develop and deliver joint training to staff. This should

incorporate information on legal powers and local protocols, and include regular refresher training. Service providers and local social services authorities with responsibility for the provision of AHMPs should ensure that those bank<sup>14</sup> and rotational staff who are likely to deal with the police and those detained under the Mental Health Act 1983 understand and comply with local procedures.

4. Clinical Commissioning Groups and local social services should make sure that they have commissioned sufficient capacity to meet the demand for assessment under section 136, and that multi-agency working is effective. This includes commissioners in local social services authorities with responsibility for ensuring that the number of AMHPs is sufficient to meet the need for assessments under the Mental Health Act 1983. Commissioners should follow the *Guidance for Commissioners: Service Provision for Section 136 of the Mental Health Act 1983*, published by the Royal College of Psychiatrists.<sup>15</sup>
5. NHS England<sup>16</sup> and Local Health Boards in Wales should ensure that local commissioning of mental health services is appropriate, and that they provide sufficient capacity and resilience to meet demand. This should be in line with those areas where police custody is currently only used on an exceptional basis.
6. Commissioners and providers of social services and health services should ensure that they identify periods of demand for the reception and assessment of persons detained under section 136, and that they effectively manage resources to meet this demand.

<sup>14</sup> Bank staff are those who are temporary and can work in different locations and departments.

<sup>15</sup> *Guidance for Commissioners: Service Provision for Section 136 of the Mental Health Act 1983, (Position Statement PS2/2013)*, Royal College of Psychiatrists, 2013.

<sup>16</sup> Formally established as the NHS Commissioning Board on 1 October 2012, NHS England is an independent body at arm's length to the Government.

7. Health and Wellbeing Boards<sup>17</sup> in England should include section 136 provision as part of their Joint Strategic Needs Assessment.<sup>18</sup> Health and Wellbeing Boards and Local Health Boards in Wales should establish a process to oversee and quality assure the use of section 136 at a local level. This should include working with the police and other interested parties.
8. The Office for Standards in Education, Children's Services and Skills (Ofsted), HMIC, CQC, HIW, HMI Probation, HMIP and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) should examine and highlight as part of their multi-agency inspections of child protection arrangements the inappropriate use of police custody as a place of safety for children under 18 years who are detained under section 136.
9. The CQC and HIW should use their combined powers under the Mental Health Act 1983 and the Health and Social Care Act 2012 to develop a robust approach to the regulation of mental health providers. The objective must be to hold services to account for their responsibilities under the Codes of Practice – in this instance, to ensure that places of safety in healthcare settings for the reception and assessment of individuals detained by the police under section 136 are appropriately staffed and secure.
10. Police custody officers should ensure that a full explanation is recorded in the custody record as to why a person detained under section 136 has not been accepted into a health-based place of safety.

The use of police custody as a place of safety would be reduced if the part of the Mental Health Act 1983 which designates police stations as places of

<sup>17</sup> Section 194 of the Health and Social Care Act 2012 establishes Health and Wellbeing Boards as fora where key leaders from the health and care system work together to improve the health and wellbeing of their local populations, and to reduce health inequalities.

<sup>18</sup> Joint Strategic Needs Assessments are the means by which local leaders work together to understand and agree the needs of all local people, with the joint health and wellbeing strategy setting the priorities for collective action.

safety were repealed. However, this would put pressure on health trusts and, ultimately, could have a detrimental effect on those suffering from mental disorder, by increasing the waiting times for assessments. We believe that our recommendations, if adopted, will reduce the use of police custody as a place of safety, without the need for legislative change.

We will closely monitor the use of police custody as a place of safety in our joint police custody inspections,<sup>19</sup> and if we do not find a significant reduction in its inappropriate use by April 2016, we will seek the implementation of the following recommendation:

11. The Mental Health Act 1983 should be amended to remove a police station as a place of safety for those detained under section 136, except on an exceptional basis.

The “exceptional basis” should be clearly defined in law and should reflect the wording currently used in the Codes of Practice, namely, where a person’s behaviour would pose an unmanageably high risk to other patients, staff or users of a healthcare setting.<sup>20</sup>

<sup>19</sup> More information on joint police custody inspections is available at <http://www.hmic.gov.uk/inspections/joint-inspections/joint-inspection-of-police-custody-facilities/>.

<sup>20</sup> *Code of Practice for England*, paragraph 10.21 and *Code of Practice for Wales*, paragraph 7.21.

# Introduction

## Aim and focus of the inspection

This inspection examined the use of police custody as a place of safety under section 136. It was carried out jointly by inspectors from HMIC, HMIP, CQC and HIW.

The Codes of Practice state that police stations should only be used to hold those detained under section 136 “on an exceptional basis”.<sup>21</sup> Although the Codes do not set out the facilities which are considered suitable as places of safety (leaving such details to local agreement), health-based places of safety are generally regarded as the preferred option in most cases. This inspection sought to identify key factors which enable or inhibit the acceptance of those detained under section 136 into such settings.

The inspection focused on:

- **police use of section 136:** why are people detained under section 136, and how often and why is police custody used as a place of safety?
- **strategic oversight and direction among partner agencies:** how far are oversight and direction improving the use of section 136, and adherence to the Codes of Practice?
- **multi-agency working:** how effectively are the police service and health partners working together?
- **recording and monitoring the use of section 136:** how are data collected, used and shared between partners?
- **training:** are all staff aware of policies and procedures regarding the use of section 136?
- **the perspectives of those detained under section 136:** what are their views on their time in police custody?

<sup>21</sup> *Op. cit.*

## Why we carried out this inspection

Successive reports into the monitoring of the Mental Health Act 1983<sup>22</sup> have drawn attention to the problems relating to the operation of section 136. In particular, the continuing use of a police station as a designated place of safety has been reported on by other organisations.<sup>23</sup> Despite the fact that police stations should only be used on an exceptional basis, all previous reports state that police stations, and, more specifically, police custody, are used as places of safety far more often than they should be.

The impetus for this joint inspection was twofold:

- first, the *Criminal Justice Joint Inspection Business Plan 2011-2013*<sup>24</sup> identified the issue of those with mental health problems in the criminal justice system as a theme for inspection. It set out the need to look at the very early stages of engagement with the criminal justice system and, in particular, the use of police custody suites; and,
- second, our respective inspectorates recognised that this particular problem around the operation of the Mental Health Act 1983 had, until now, never been subjected to any form of specific multi-agency inspection.

By carrying out this jointly commissioned inspection, we anticipated that we might be able to bring a new perspective to an area which has been intensively investigated and monitored, but in which it has proved difficult to bring about necessary improvements and changes to practice.

<sup>22</sup> *Coercion and Consent: The 13<sup>th</sup> Biennial Report of the Mental Health Act Commission*, Care Quality Commission, 2010; *Monitoring the Use of the Mental Health Act in 2009/2010*, Care Quality Commission, 2011; *Monitoring the Use of the Mental Health Act in 2010/2011*, Health Inspectorate Wales, 2010; *Monitoring the use of the Mental Health Act*, Health Inspectorate Wales, 2011.

<sup>23</sup> *Police Custody as a 'Place of Safety'*, Independent Police Complaints Commission, 2008; *Standards on the Use of Section 136 MHA 1983*, Royal College of Psychiatrists, 2011; *Responding to People with Mental Ill Health or Learning Disabilities*, Association of Chief Police Officers, 2010.

<sup>24</sup> The joint plan is published by HMIC; HMIP; Her Majesty's Inspectorate of Probation; HMCPSI. It is published under the statutory framework established by the Police and Justice Act 2006.

## Background

### Section 136 explained

Section 136 states:

- (1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it is necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of section 135.*
  
- (2) A person removed to a place of safety under this section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved mental health professional and of making any necessary arrangements for his treatment or care.*

Places which may be used as a “place of safety” are defined in section 135(6) of the Mental Health Act 1983 as:

- *residential accommodation provided by a local social services authority under part III of the National Assistance Act 1948;*
- *a hospital as defined by [the Mental Health Act 1983];*
- *a police station;*
- *an independent hospital or care home for mentally disordered persons;*  
*or*
- *any other suitable place the occupier of which is willing temporarily to receive the patient.*

Further detailed guidance about the operation of section 136 is given in the Codes of Practice. Although the Code of Practice for Wales differs from that for England in respect of the management of those detained under section 136, both Codes of Practice broadly state that:

- it is preferable to be detained in a hospital or other healthcare setting where mental health services are provided;
- a police station should only be used on an exceptional basis;

- a police station should not be assumed to be the automatic second choice, if the first choice place of safety is not immediately available; and
- a police station should only be used where it is absolutely necessary to provide containment for someone whose violent behaviour would pose an unmanageably high risk to others.

The legal status of the Codes is clear: the Mental Health Act 1983 requires those individuals to whom it is directed to have “regard” to it. The Judicial Committee of the House of Lords has considered the status of the *Code of Practice for England*.<sup>25</sup> It held that, although the Code of Practice is guidance and not an instruction, it is more than merely advice which the recipient is free to choose to follow or to disregard. Instead, there should be cogent reasons for any departure from the Code (that is, for choosing to disregard the guidance), which should be identified and spelled out clearly, logically and convincingly. The failure to follow the Code of Practice can give rise to legal challenge, and the party deciding not to follow the Code must be prepared to justify any such decision.<sup>26</sup>

It is reasonable to assume that the same approach would be adopted in respect of the *Code of Practice for Wales*.

### **Extent of the use of police stations as places of safety**

The CQC and HIW have continuing monitoring programmes which focus on different provisions of the Mental Health Act 1983, and both have reported their findings in published reports.<sup>27</sup> Although these reports show an increasing use of hospital-based places of safety over the past six years, and include examples of good practice (where police stations are rarely used), the common theme is that, nationally, police stations continue to be used far more often than on “an exceptional basis”.

<sup>25</sup> *R (Munjaz) v Ashworth Hospital Authority* [2005] UKHL 58.

<sup>26</sup> *Op. cit.*, paragraph 21 of Lord Bingham of Cornhill’s Opinion.

<sup>27</sup> See footnote 22 above.

## Related activity: joint inspection of police custody facilities

HMIP, HMIC and CQC carry out regular inspections of police custody facilities.<sup>28</sup> This programme began in 2008, and at the time of writing (March 2013), over 60 police forces and London boroughs have been inspected. When inspecting police custody suites, inspectors use detailed criteria, or expectations,<sup>29</sup> to assess the treatment and conditions of those detained in police custody. These expectations offer a guide to senior police officers and police and crime commissioners about the standards which the inspectorates should find. They include an expectation that “police custody is not used as a place of safety for section 136 MHA 1983 assessments”.<sup>30</sup> During these inspections, we have found that the use of police custody as a place of safety was rare in several forces; frequent in most; and extensive in some. Whilst there were pockets of good practice and appropriate multi-agency working, the frequent use of police custody as a place of safety was often the result of a lack of effective local arrangements. We found:

- no or ineffective strategic liaison groups or local multi-agency section 136 groups;
- incomplete data capture and an absence of (or inadequate) monitoring of the use of section 136;
- exclusion criteria<sup>31</sup> imposed by the NHS which were contrary to national guidance, and, in some instances, contrary even to locally agreed protocols;
- differing local NHS definitions of “intoxication”, often in contradiction of national guidance;
- a lack of NHS mental health section 136 facilities, or arbitrary closure of NHS section 136 suites without offering an alternative. For example, in

<sup>28</sup> See <http://www.hmic.gov.uk/inspections/joint-inspections/joint-inspection-of-police-custody-facilities/>. HIW is working with HMIP and HMIC to introduce similar joint monitoring arrangements in Wales.

<sup>29</sup> <http://www.justice.gov.uk/about/hmi-prisons/inspection-and-appraisal-criteria>.

<sup>30</sup> *Expectations for police custody*, HMIP and HMIC, 2012. Expectation 22. The full set of expectations are available at: <http://www.justice.gov.uk/downloads/about/hmipris/police-custody-expectations.pdf>.

<sup>31</sup> Reasons for refusal to admit an individual to a health-based place of safety for assessment.

Sussex, custody staff perceived that section 136 suites were frequently unavailable, either because they were occupied, or because they had been closed due to staff shortages. The records at the two section 136 suites which we visited stated that one had been closed four times in the previous five months, and the other 10 times in the previous two months; and

- a lack of section 12 approved doctors<sup>32</sup> and other appropriate staff to undertake mental health assessments. For example, we observed a woman who had been detained at 5.30am, when a section 136 suite place was not available. The casualty department had declined to admit her, and so she was detained in police custody. She was referred to the AMHP service, and transported to an NHS facility at 4.45pm, over 11 hours after her initial detention. During her stay in police custody, she experienced several acute psychotic episodes.

## National statistics

One of the difficulties which we identified in our literature review was the absence of reliable, verifiable data for all detentions under section 136. In England, the Health and Social Care Information Centre counts only detentions in hospitals. There is no equivalent systematic national collection of data for detentions where the individual is taken to a police station or facility other than a hospital.

The Health and Social Care Information Centre produces an annual report<sup>33</sup> on the use of the Mental Health Act. It includes information about the number of people detained in a hospital-based place of safety, and reports that the number of people taken to a hospital as a place of safety in England has risen steadily since 2006 (see Figure 1, overleaf). The Welsh Government also collects and

<sup>32</sup> A section 12 approved doctor is a medically qualified doctor who has been recognised under section 12(2) of the Mental Health Act 1983. These doctors have specific expertise in mental disorder, and have received training in the application of the Act. Statutory responsibility for approving doctors under section 12(2) of the Mental Health Act 1983 in England was delegated to the ten Strategic Health Authorities, which from 01 April 2013 were replaced by NHS England and Clinical Commissioning Groups.

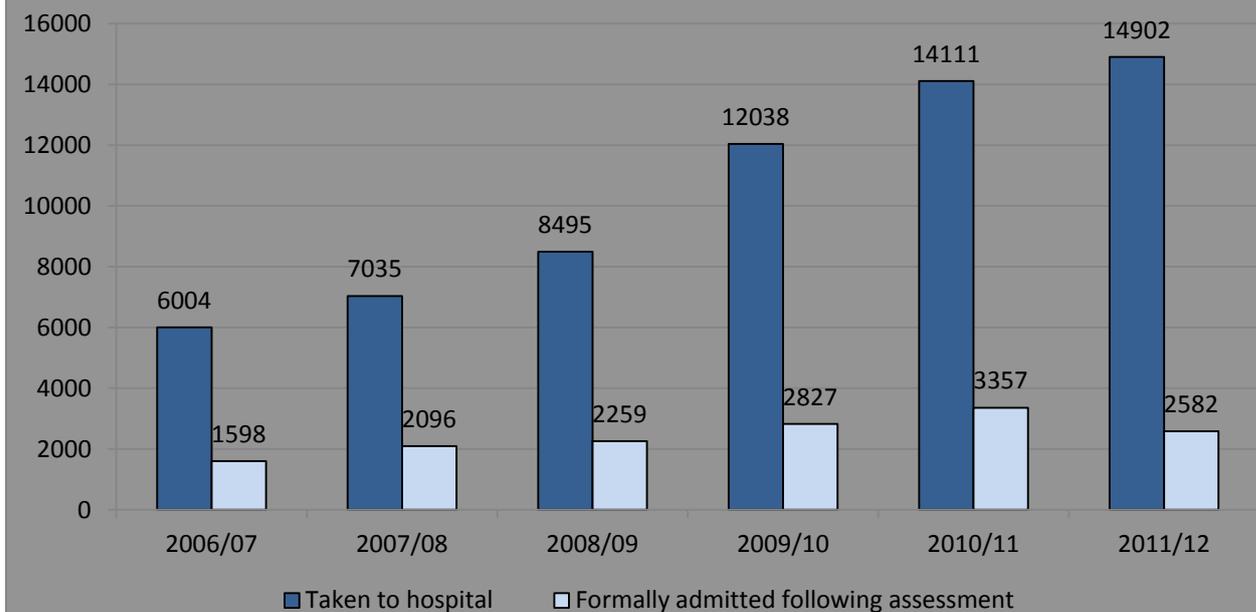
<sup>33</sup> *In-patients Formally Detained in Hospitals under the Mental Health Act, 1983 – and Patients Subject to Supervised Community Treatment, Annual Figures, England 2010/11*, Health and Social Care Information Centre, 2012.

publishes similar data, which show that the rise is replicated in Wales (see Figure 2).

In 2011/12, the Health and Social Care Information Centre recorded 14,902 instances when hospitals were used as places of safety (including those individuals who were transferred to hospital following initial detention at the police station). In any one year, the majority of detentions under section 136 do not result in formal admission to hospital. It is not known how many people are admitted on an informal or voluntary basis; offered community care or follow-up appointments; referred to other agencies; or not offered further support. The most recent report from the Health and Social Care Information Centre notes that the number of times that section 136 is used without a resultant detention has increased, from 73% in 2006/07 to 83% in 2011/12. In Wales, this figure has ranged between 85% and 88% over the same period.

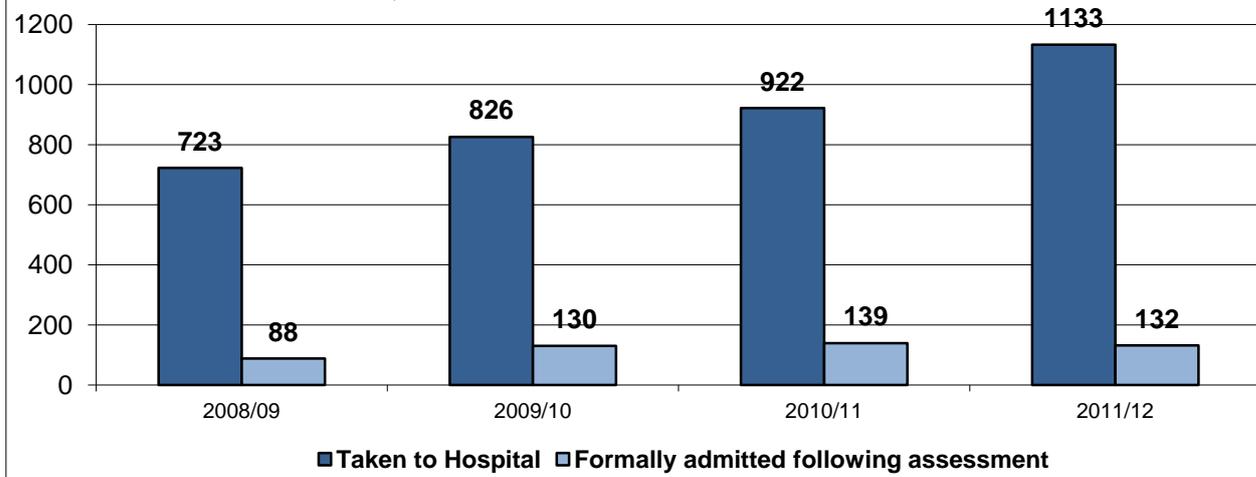
Although a national data set does not exist to give a breakdown of those not formally admitted to hospital, one force which we visited provided us with its own information on this. It showed that, out of 387 people detained under section 136 during 2011, 71% either were admitted to hospital (15%) or had some other follow-up action, (56%). Of the remaining 29%, 16% did not have any follow-up action and 13% were shown as “other”.

**Figure 1: The number of people taken to hospital-based place of safety in England, and the number that resulted in a formal admission**



Data source: Health and Social Care Information Centre

**Figure 2: The number of people taken to a hospital-based place of safety in Wales, and the number that resulted in a formal admission**



Data source: Welsh Government\*

\* Prior to April 2008, people could not be transferred between places of safety. Since then, there has been a power to transfer people between places of safety. Data on outcomes have only been collected since 2008/09. The overall number of hospital-based place of safety detentions include some double counting since 2008/09, as some people are transferred and may, therefore, be counted more than once. In addition, the Welsh Government has identified some accuracy issues with the place of safety detention data above. The data should be used and interpreted with care. The Welsh Government is reviewing the guidance and data collections and working closely with users to improve the accuracy of the data for the future.

The year-on-year increase could be explained both by improved reporting and by an increase in the use of section 136. The reasons for the proportional reduction in formal admissions are unknown. It could be because of the change in police understanding of “mental disorder”; the inappropriate use of section 136; changes in hospital assessment and admission criteria; the use of alternatives to detention; or, most likely, a mixture of these factors. Further detailed exploration is required to ensure that section 136 is being used appropriately.

Currently, the police service does not produce any annual data about the overall use of section 136. However, two data collection exercises are helpful:

- in 2008, the Independent Police Complaints Commission (IPCC) reported that, in 2005/06, there were 11,500 people detained in a police station under section 136, and 5,900 detained at a hospital-based place of safety;<sup>34</sup>
- in June 2012, the Association of Chief Police Officers (ACPO) asked every police force in England and Wales to provide figures on the number of people detained under section 136 between April 2011 and March 2012. Their results showed 9,378 people were taken directly to a police station as a place of safety.

Without any reliable, centralised year-on-year data collection across police forces, these figures should be treated with caution; and, as we have seen, there has been a year-on-year rise in the use of hospital-based places of safety for those detained under section 136. This notwithstanding, however, the use of police stations on 9,378 occasions suggests that this is not happening only on an exceptional basis. Anecdotal evidence indicates that hospital-based places of safety are not accessible as envisaged by the Codes of Practice. Further work is required to ensure systematic data collection, in order to provide a better understanding of the operation of section 136.

<sup>34</sup> See footnote 22.

## ***MS v United Kingdom, (2012) 55 EHRR 23***

This legal ruling by the European Court of Human Rights (ECtHR) emphasises the importance of moving agencies towards a position where police custody is only used to hold those detained under section 136 on an exceptional basis.

In *MS v United Kingdom*, the ECtHR held that an individual detained in a police station under section 136 had been subjected to a violation of his rights under Article 3 of the European Convention on Human Rights (ECHR).<sup>35</sup> He had been detained for approximately 75 hours in police custody, with all parties appearing to have accepted that he had been detained for at least 12 hours longer than necessary, because of delays in completing an assessment.

The ECtHR found that the treatment of the individual was degrading, which it defined as being such as to: *“arouse feelings of fear, anguish and inferiority capable of humiliating or debasing the victim and possibly breaking their physical or moral resistance.”*<sup>36</sup>

This ruling means that a successful claim can be brought under Article 3 ECHR by an individual who is detained for a prolonged period in police custody where the police station is an unsuitable place for him or her, even if the detention itself is in accordance with the Mental Health Act 1983.

<sup>35</sup> Article 3 states: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

<sup>36</sup> *MS v United Kingdom, (2012) 55 EHRR 23*. Page 10, paragraph 38.

## Methodology

Inspectors from HMIC, HMIP, the CQC and HIW participated in this inspection.

### Fieldwork

Fieldwork was undertaken in nine areas: Kent; Lancashire; Leicestershire; Norfolk; North Wales; Suffolk; and Sussex; and the Metropolitan boroughs of Bromley and Lewisham. This provided a cross-section of geographic and demographic areas in England and Wales, and included areas with particularly high and low uses of police custody as a place of safety for those detained under section 136.

In each area:

- the local police force was inspected by HMIC and HMIP;
- representatives from the local health organisations responsible for strategic leadership and operational delivery of section 136 were interviewed by MHA Commissioners from CQC, and an MHA Reviewer from HIW.<sup>37</sup>

### Custody record analysis

We examined ten cases from each area inspected<sup>38</sup> (a total of 70) where individuals had been detained solely under section 136 and accepted into police custody as a place of safety, to establish why the person had not been taken to a health-based place of safety, and what happened to him or her while in police custody. Further information from the custody record analysis can be found at Appendix B.

<sup>37</sup> Under section 120 of the Mental Health Act 1983, CQC and HIW have responsibilities to keep under review the exercise of powers and discharge of duties associated with the Act. Under this function, CQC appoints MHA Commissioners and HIW appoints MHA Reviewers to undertake visits to detained patients.

<sup>38</sup> Bromley and Lewisham were excluded from this aspect of our inspection as the boroughs did not have a sufficient sample of records for the timeframe in which we were operating.

## **Perspectives of those detained under section 136**

We wanted to understand more about individuals' experiences of detention under section 136 when they were taken to a police station. We felt it inappropriate to speak to anyone actually in police custody during the fieldwork. Instead, we asked all MHA Commissioners in England and MHA Reviewers in Wales to complete a short report on any meetings which they had with anyone who had previously been detained under section 136 and taken to police custody as a place of safety.

### **This report**

Our findings are discussed under the following headings:

- the police use of section 136;
- the strategic oversight and direction;
- multi-agency working;
- recording and monitoring the use of section 136;
- training; and
- the perspectives of those detained under section 136.

## Police use of section 136

The local mental health service provider should usually provide facilities to care for someone detained under section 136. However, we found that too often this responsibility was left to the police alone. We therefore wanted to understand, in detail, how those detained under section 136 were identified and managed by the police and health services, and to determine those factors which enabled or inhibited the greater use of alternatives to police custody as a place of safety. We examined the reasons for detention; the frequency with which police custody is used; and why police custody is often used as the first place of safety.

From our analysis of custody records and speaking with police officers, it was evident that individuals who were brought into police custody as a place of safety were treated like any other detained person with regard to the booking-in procedure; risk assessment; and ultimately being locked in a cell. The main differences were:

- they were detained for a health assessment, rather than arrested for a criminal matter; and
- they could legally be kept in police custody for significantly longer (up to 72 hours) than detained persons who have been arrested for criminal matters, without any requirement for any independent review of their detention (as is required for those subject to the Police and Criminal Evidence Act 1984).

### **How often are police stations being used as places of safety?**

In the forces we inspected, between 6% and 76% of those who were detained under section 136 were brought into police custody: see Table 1 (overleaf).

**Table 1** Number of people detained under section 136 in inspected forces in 2011

Area	Number of people detained under section 136 during 2011	Percentage brought into police custody
A	50	6%
B	409	6%
C	444	7%
D	348	12%
E	398	15%
F	2163	55%
G	350	76%

Data source: data provided by inspected forces

Some areas had effective arrangements to resolve differences of opinion between police and health services managers about the most appropriate place of safety in any given case. This often led to individuals either being taken directly to a health-based place of safety, or being transferred quickly from police custody to a health-based place of safety. However, this practice was not uniform across all force areas.

## Reasons for detention

We analysed the most common reasons given for detention under section 136 in the case records sample:

- attempting suicide or self-harm, or ideation of suicide or self-harm: 57 (81%) of the 70 cases; and
- “concerning behaviour”: 12 (17%) of the cases. For example, custody records indicated some detained persons were experiencing paranoia, or showing signs of extreme confusion.

In interview, officers in all forces told us that they did not use section 136 powers lightly. They showed a genuine concern that police custody was not an appropriate place for those with mental ill health.

*"I feel I have broken down the trust with a person when I have to lock them in a cell."*

Frontline police officer

## **Involvement of mental health crisis teams**

We found that engagement with mental health crisis teams in section 136 cases varied from area to area:

- there was good practice in Kent, with crisis teams involved early on (from the scene, and before detention). This often gave officers options other than detention under section 136, which they welcomed, and the crisis teams were available every hour of each day; but
- in other areas, availability of this service was limited.

Officers told us that they saw great benefit in being able to engage with crisis teams before making a decision to detain someone, as they often felt that they had limited options available otherwise.

## **Time of detention**

Two-thirds of the detentions reviewed as part of our sample occurred between 6pm and 9am. We found that, in most areas we visited, there were limited resources to carry out assessments out of normal office hours. This often led to delays and to people being detained for longer than would otherwise be necessary.

## **Why are police stations being used as the primary place of safety?**

We found that, in 44 (63%) of the cases reviewed, the individual had been taken into police custody in the first instance, rather than to an alternative place of safety. In a further 9 (13%) cases, it was unclear whether the detained person had been taken into police custody in the first instance or not.

Thirteen of the 44 case records indicated why the detained person was taken to a police station rather than another place of safety. The most common reasons were:

- the person had consumed alcohol;
- the person had a history of violence (and there were, therefore, concerns about his or her safe management); or
- there was no bed available at a hospital.

The reasons were not recorded in the remaining 31 cases.

Without this information, neither police forces nor health service providers can monitor their compliance with the Codes of Practice effectively. It is essential, therefore, that this information is recorded on the custody record. For example, if there were a death in police custody, the rationale for detaining a person under section 136 in police custody, rather than a hospital-based place of safety, would need to be fully explained.

### **Drug and alcohol use**

Some staff told us that those detained under section 136 who had consumed alcohol were much less likely to be accepted into a hospital-based place of safety, because they could not be assessed while intoxicated. However, the amount of alcohol that needs to have been drunk to constitute intoxication varied from area to area. We were told that one hospital-based place of safety breath-tested individuals on arrival, or asked police officers to do so. A positive reading (over the legal limit for driving) resulted in the detained person being refused admission and taken, instead, into police custody.

Our analysis of custody records showed that 53 people (76%) were intoxicated when they were detained. This was the recorded reason why nine (13%) were either not taken to an alternative place of safety, or were removed from an alternative place of safety and taken to police custody. These nine were regarded as being too intoxicated for a mental health assessment and so were brought back to, or left in, police custody until sober.

*“...due to level of intoxication, he is not fit to be assessed for several hours, therefore he has been brought to...custody so he can sober up and be fit enough for assessment by the MH team...”*

Custody record entry from sample

### **Concerns about safety**

If a detained person were deemed to be violent, he or she would be more likely to be taken into police custody than to an alternative place of safety. Significantly, however, this did not mean that, in all cases reviewed, either the individual posed an immediate risk to themselves or to others, or that he or she required a greater level of security and containment than could be safely provided at a hospital. In at least one force area, health organisations would not admit anyone who was escorted to the place of safety in handcuffs or who had a history of violence, either on their health records or on a police record.

In our case record analysis, 11 people (16%) were not taken to, or were removed from, an alternative place of safety because they were aggressive or violent:

- four were taken to hospital but were refused treatment and returned to police custody because of aggressive or violent behaviour;
- one person was collected from hospital and taken into police custody after becoming aggressive;
- in one case, a general practitioner (GP) was contacted but he or she refused to come out to the detained person; and
- notes in the remaining five cases suggest that those detained were not taken to hospital because they were aggressive, volatile or behaved violently while in police custody.

### **Insufficient staff or lack of bed space at the health-based place of safety**

The lack of available hospital-based places of safety was a problem in some force areas, and meant that police custody was more likely to be used as a

primary place of safety. However, we were told that the temporary closure of section 136 suites in a London trust often resulted in a detained person being transferred to another borough in order to avoid the inappropriate use of police custody.

## **Mental health assessments**

Although multi-agency operational policies on the use of section 136 set different target times for the completion of mental health assessments, we found that they were not always met. This was particularly the case when people were detained between 6pm and 9am, because of the limited availability of AMHPs. In contrast, we found that in Norfolk the target time of two hours was often met, as a result of greater provision of AMHPs between these times.

In our custody record analysis, we found bottlenecks around bed availability once assessments had been completed, leading to individuals being held in police custody longer than necessary. For example, in one case in February 2012, five hours and 44 minutes elapsed from the time when the application for detention in hospital had been completed, to the person being transferred from custody to the hospital, because of a shortage of beds. The total time in police custody was 20 hours 12 minutes.

Even in cases where people were taken to hospital, police officers frequently described the long waiting times before assessments took place. Waits of between six and eight hours were not uncommon; we were told of one instance when officers were required to wait 52 hours.

There was also a lack of consistency across the areas inspected about how long the police were expected to remain at the hospital. In some cases, officers waited until the assessment had been completed, regardless of the level of risk posed by the detained person. In others, officers and health staff would agree when officers could leave, based on the perceived risk.

*“No one wants to do a 136; it will tie you up for the rest of your shift. If there were an alternative, we would use it.”*

Frontline police officer

Although not within the scope of this review, the fact that officers spend so many hours in hospitals waiting for a mental health assessment to take place had significant implications for operational policing. As can be seen from Figures 1 and 2, there has been a significant increase in the number of detentions under section 136. We believe that the issue of police officers waiting for long periods in hospitals needs urgent attention, and should be the subject of a separate joint inspection in the near future.

## **Detention of children and young people**

Some forces we visited reported that individuals as young as 14 or 15 years old had been detained under section 136. In our sample of custody records, there were four young people: one aged 16, and the other three aged 17. We include two case examples here to illustrate some of the complexities involved in caring for such young people in an environment which is not designed to meet their needs.

The 16-year-old (whom we have called John to mask his identity) appears to have presented a number of challenges to the custody staff, because of his health needs and the length of time which he had spent in a police station, prior to his transfer to hospital. John was kept in custody for 11 hours 30 minutes before an application for detention under the Mental Health Act 1983 was made. He then remained in custody for a further ten hours 27 minutes before being taken to hospital. This delay was partly caused by having to wait for an ambulance. To ease his evident distress, police officers made arrangements for a family visit with his estranged mother and 18-year-old sister, following the decision to admit him to hospital under section 136.

'Garth', aged 17, attended the local police station and handed in a machete. Although he had not used the knife to harm anyone, it appeared that he was mentally unwell and was expressing delusional beliefs. The local mental health services crisis team spoke to him on the telephone and decided that he needed specialist help from the child and adolescent mental health services (CAMHS) team – but no one was available between 6pm and 9am. As a result, Garth was detained in police custody until a CAMHS team member became available

(after 9am the following day). The custody sergeant was so concerned about his welfare that Garth was placed on close proximity observations.<sup>39</sup> Following a Mental Health Act 1983 assessment, he was detained and taken by ambulance to a specialist unit. Despite being neither intoxicated nor violent, Garth spent a total of 18 hours seven minutes in police custody, of which over four hours were spent waiting for a suitable bed to be found, and for an ambulance to transfer him to hospital. From reviewing the local protocols, it is likely that, if Garth had been 18 years old, he would have been taken directly to the local hospital-based place of safety; but because of poor mental health service provision, Garth was kept in a police cell pending transfer to hospital.

We suggest that the relevant regulators for education, health, police and prisons should examine the inappropriate use of police custody as a place of safety for children under 18 years of age who are detained under section 136 as part of the forthcoming multi-agency inspections of child protection arrangements.<sup>40</sup>

## **Outcomes for those held under section 136 at a police station**

We wanted to understand the assessment and care pathways<sup>41</sup> of those held under section 136. From both our analysis of custody records and speaking to staff, it was apparent that, once a detained person is taken to a police station, it is more likely that an assessment under the Mental Health Act 1983 will take place there, rather than at a health-based place of safety. In our sample, 61 of the detained persons were assessed; 41 (67%) of these assessments took place in police custody, and 20 (33%) took place in an alternative place of safety. For those assessed in police custody, the average length of time to wait for an assessment was nine hours 36 minutes, although the range was between three and 20 hours.

<sup>39</sup> This requires either a police officer or police staff member to be taken off normal duties to monitor the detained person constantly from outside the cell.

<sup>40</sup> These inspections are scheduled to start in 2014. Search for 'multi-agency child protection' on [www.hmic.gov.uk](http://www.hmic.gov.uk) for details.

<sup>41</sup> A care pathway is a set of interventions and a package of care.

We then examined the reasons for any delays in assessing these cases:

- 18 cases appear to have been delayed because of the unavailability of any AMHPs and section 12 approved doctors, with all but five of these cases detained between 6pm and 9am;
- in three cases, the cause for delay was intoxication. The detained persons were recorded as unfit for assessment, and were held in police custody until they were sober; and
- no reason was recorded in the remaining 12 cases where we judged that a delay in assessment had occurred.

In our sample of custody records, we found that the average time in police custody was ten hours 32 minutes. Although we only looked at a relatively small number of cases, all the assessments took place at the police station within 24 hours, or the detained person was transferred to a health-based place of safety for assessment within 24 hours.

It is reasonable to expect that, in the majority of cases, the reasons for using a police station as a place of safety would no longer be valid after 24 hours: for example, in cases where the delay was due to the consumption of alcohol, the person is likely to have sobered up. Similarly, if the reason was a lack of bed availability at the time of detention, it is likely that a bed would become available in that period.

We consider that the Codes of Practice should be amended to bring detention times for those detained in police custody under section 136 in line with the Police and Criminal Evidence Act 1984, which allows up to 24 hours in police custody (out of the maximum of 72 hours).

The period of detention should be subject to regular, independent reviews by both police and health officials, to ensure that:

- action is taken to transfer the detained person to a health-based place of safety as soon as is practicable; or

- where any transfer to a health-based place of safety may cause unnecessary delay, an assessment is carried out as soon as possible at the police station.

Any assessments which are needed after the 24 hours in police custody have elapsed should be undertaken in a hospital.

## Strategic oversight and direction among partner agencies

All the force areas that we visited had strategic partnerships in place. However, the maturity of those partnerships varied, as did their ability to provide vision and leadership around compliance with the Codes of Practice. A common concern was the extent to which practice improvements depended on local champions driving the agenda, rather than on the effective management of section 136 being deeply embedded within partner organisations. Whilst all areas had some form of multi-agency forum or group with oversight of section 136, changes to key personnel within health provider organisations sometimes had a negative impact on improving service delivery in this area of work.

## Multi-agency working

### Multi-agency policies and protocols

We found that multi-agency policies and protocols were available in all the areas that we inspected. On the whole, they were adequate, but we were concerned to find more than one instance where policies:

- were either out of date and overdue for redrafting; or
- had yet to be agreed; or
- did not address all the requirements of the relevant Code of Practice.

Protocols varied in length, complexity and scope, from a one-page, laminated sheet, to a document which was 115 pages. We were given assurances that steps were being taken to amend the protocols where a policy appeared deficient because it did not address all the requirements set out in the relevant Code of Practice.

It was encouraging to see that some areas had sought to incorporate other relevant guidance and best practice into their documentation;<sup>42</sup> but this was not universal.

### Multi-agency working

A requirement under the Codes of Practice is that partner agencies work together in order to monitor the use of section 136 and to ensure compliance with the Mental Health Act 1983 and the relevant provisions of the Codes of Practice.<sup>43</sup> We therefore examined how police forces and their health partners were working together to ensure that they were monitoring and keeping to a minimum the use of the police station as a place of safety.

<sup>42</sup> For example, *Standards on the Use of Section 136 of the Mental Health Act 1983 (England and Wales)*, Royal College of Psychiatrists, CR159, 2011.

<sup>43</sup> *Code of Practice for England*, paragraph 10.42; *Code of Practice for Wales*, paragraph 7.11.

We found that not all areas had a clearly defined multi-agency strategic framework. Without such a framework, it is difficult for the police and health partners to work together effectively to ensure compliance with the Codes of Practice in all cases of section 136 detention. We found that, on occasion, there was a lack of clarity about who was the lead person within the health service for section 136 work. In one area, the focus on section 136 was part of a broad agenda of multi-agency meetings, rather than a discrete subject. This led to variation in the quality and status of the relevant policies and procedures.

However, we also found evidence of some excellent partnership working. For example, in North Wales, there had historically been a very high use of police custody as a place of safety. Through effective partnership working and a willingness to resolve the issues, all the relevant agencies (including local councils, the health board, ambulance service and police) developed a single multi-agency protocol, led by North Wales Police. This was introduced in March 2012 and officers and health staff were provided with training on the revised procedures.

Since its introduction, North Wales Police has seen a significant reduction in the use of police stations as places of safety, from 76 in the period between 01 April 2011 and 31 August 2011, to 14 in the corresponding period in 2012.

## Recording and monitoring the use of section 136

The quality of the recording and monitoring of information about individuals by the police and health services was mixed. Best use was not being made of police IT and intelligence systems in the recording of details on those detained under section 136 and the subsequent retrieval of that information to assist officers on the ground. There were exceptions: for example, in Leicestershire, we found excellent arrangements for recording (a vulnerable person report) and accessing previous police involvement with an individual, via a search tool which interfaced with several force IT systems.

The custody records that we examined were of variable quality. Whilst some were good, there was a lack of detail in many, and some were very poor. A few handwritten records proved difficult to read.

We did not find any strong evidence of standardised data collection systems in place at local levels. Each area varied with regard to what was collected; the use to which the data collected was put; and what was shared between partners. This led to problems in the sharing of data between partner agencies which should occur in order to build a comprehensive intelligence picture about the outcomes of those detained under section 136, and to inform future practice. In two cases, we were told that concerns from health organisations in relation to patient confidentiality had resulted in the information which they shared with the police being of little practical benefit. However, this was not the case in all areas inspected, demonstrating that agencies can successfully overcome such problems.

## Quality assuring practice

Quality assurance processes to improve inter-agency working and cooperation were of variable quality. Although we found some good examples of case-based discussion and learning from experience, there was no strong evidence of the consistent use of qualitative or statistical data to inform quality assurance processes by the various partner agencies. There were, however, some examples of good practice.

- In March 2011, Kent Police and Kent and Medway Partnership Trust ran a multi-agency learning event using Lean Principles<sup>44</sup> to review the processes involved in the use of section 136, and to identify problems and inefficiencies in the processes. The event highlighted a number of proposed new processes, which were designed to improve the outcomes for individuals detained under section 136. Joint agency reviews of section 136 working, applying Lean or other modernisation principles, is good practice.
- In Leicestershire, officers create a vulnerable person report for every section 136 detention. These are reviewed by a supervisor on the Comprehensive Review Desk,<sup>45</sup> who decides what action to take. This may involve the development of strategies with partner agencies to reduce the risk of harm. In cases where a person is not admitted to hospital under the Mental Health Act 1983, information is sent to his or her GP, with the intention that the person might be offered continuing care. This process, along with an ability to search a number of police IT databases, assists officers in assessing risk in any future dealings with individuals who have previously had contact with the police. This is good practice.

<sup>44</sup> Lean Principles involve a systematic approach to identifying and eliminating waste through continuous improvement.

<sup>45</sup> A central recording and referral point for vulnerable adults, vulnerable children and domestic abuse reports, dealing with both internal and external referrals.

- Although not as part of this thematic review, our inspection of Gwent Police as part of the joint inspection of police custody facilities in September 2012 found that the force had an excellent system for collating information about detentions under section 136, regardless of where the individual had been taken. The data were analysed in a number of ways to establish patterns and trends. Gwent also had systems to flag individuals who had been detained more than three times. In these instances, the sergeant responsible for monitoring the data contacted the Health Board directly, to ensure that the individual was receiving appropriate care and treatment. The database was populated using data supplied by the detaining officers and health professionals. All section 136 detentions were subject to review by a custody inspector and, if it was considered that section 136 had been used inappropriately, the officer's line manager was informed, and subsequent action taken.

## Training

We found that police and health staff could improve their awareness of policies and procedures in relation to use of section 136. Some forces had produced flowchart diagrams to assist officers, but not all the officers to whom we spoke were aware of their existence.

There were gaps in knowledge around section 136 powers and local procedures, especially among health staff, who had not always received training specifically in relation to section 136 (although this was sometimes covered in wider training about the Mental Health Act 1983). Training was not mandatory in all areas, and there were differences in the level and thoroughness of what was provided.

Training for police officers with regard both to dealing with persons suffering from mental health problems and to the use of section 136 varied. Frontline police officers and staff were mainly trained online. Officers stated that, although it gave them knowledge of their powers, they felt that the training should include local policies and procedures. Both police and health staff said that they would value multi-agency, face-to-face training, in which typical scenarios could be analysed and local circumstances considered in the discussions.

We found some good practice:

- in Lancashire, an AMHP delivered comprehensive training on section 136, policies and procedures to frontline officers;
- in Leicestershire, a police office had been established within a hospital's mental health unit, and the officers based there had created an intranet site. The site regularly hosted information bulletins for frontline officers in relation to dealing with mental health problems;
- in North Wales, following the introduction of their revised multi-agency protocol, a programme of face-to-face awareness training was delivered to frontline officers and health staff. This was supported by information

and a video blog on the force intranet. Officers told us, however, that there had been initial teething problems with the roll-out of the training to both police and health staff, with some health staff initially being unaware of the new protocol. This led to detained persons being refused access to health-based places of safety. With an effective escalation process and good relationships between police and health staff, these issues were resolved.

## Perspectives of those detained under section 136

We considered that it was important to seek the views of people who had experienced being detained under section 136 and taken into police custody. This posed a methodological challenge: the likelihood of encountering in the fieldwork a person being held in a police station under section 136 was remote and, in any event, we believed that it would have been inappropriate to seek his or her views on the detention while it was occurring, given the acute nature of the individual's situation.

Instead, we asked all MHA Commissioners in England and MHA Reviewers in Wales to seek the views of those who had been detained under section 136. If, during the course of their normal monitoring visits to hospitals, they encountered a person who had previously been detained under section 136, they were to carry out a short, semi-structured interview, so that individuals might be given an opportunity to speak about that particular aspect of their detention.

Many of those detained remarked that their experience had made them feel like criminals, and they described many aspects of the custody process as de-personalising. For example, some referred to being handcuffed, or having their jewellery removed. Some, however, told us of the kindness that they had experienced when in custody, and there was a recognition that, whilst they believed their time in detention was not necessary, they were treated in a humane and sensitive manner.

We also had an opportunity to speak in detail with a 40 year old man, whom we call here 'Mr Peterson', about his experiences, and he was happy for us to repeat his story. Mr Peterson has suffered with bi-polar disorder for 19 years. He was detained by police while on a bridge near his home. He was handcuffed. He recalled having his head pushed under the seat in the back of the police car. Leg restraints were applied. He was taken by the police to a secure mental health unit. He said: "My body didn't touch the floor." He was refused admission to the mental health unit and taken into police custody,

where he stated that, at some point, he was “tasered”.<sup>46</sup> He described being distraught and in excruciating pain in the police cell, thinking: “[w]hat have I done to deserve this?”. Asked how he felt, he stated: “I was ill; I was locked up because I was ill.”

He was examined by two nurses and a doctor, and subsequently detained in hospital under the Mental Health Act 1983. Asked how he felt when he eventually got to hospital, he stated he had “a feeling of relief; I got through it; I was alive.”

It is clear to us that, from the experiences we have heard about in this review, there is considerable work to be done to ensure that those who may already be suffering from mental health problems do not have their conditions exacerbated by the way in which they are detained.

<sup>46</sup> A taser is a single-shot weapon, designed temporarily to incapacitate a subject through the use of electrical current which interferes with the body’s neuromuscular systems.

## Conclusions

This review builds on the reported findings from the joint inspection of police custody facilities programme; previous studies; and published guidance on the use of police custody as a place of safety for those detained under section 136. We found some excellent practice in some areas, with police custody rarely used as a place of safety; however, we were disappointed that, in other areas, the use of police custody remains unacceptably high.

The Codes of Practice state that a police station should only be used as a place of safety for those detained under section 136 on an exceptional basis. However, data show that, in 2011/12, 9,378 of section 136 detentions were taken into police custody. The numbers of those detained through police custody have reduced by 18% since 2005/06, and the proportion of the total number of detentions under section 136 being taken into police custody has decreased even more significantly. However, the numbers being taken into police custody and the variation in the use of health-based places of safety is still far too high.

In carrying out this review, it was clear that the Codes of Practice have not been followed in some areas for many years.

The publication of this report is timely, with the introduction in England of new commissioning arrangements and Health and Wellbeing Boards (in April 2013). NHS England ought to have a role in ensuring that the local commissioning of mental health services is appropriate and provides sufficient capacity and resilience to meet demand. There is also a role for Health and Wellbeing Boards, which should include section 136 provision as part of their Joint Strategic Needs Assessment.

We have highlighted areas of good practice in this report, including in North Wales, where the number of section 136 detentions in police custody has dropped significantly because of some excellent partnership working. Areas where there is a high use of police custody need to learn from such practice.

This report also contains a number of recommendations, which, if adopted in full, should reduce the use of police custody in all but the most exceptional circumstances, and improve the capability of the health service to deal effectively with the increase in overall numbers being taken to hospital-based places of safety.

## Good practice

### Effective partnership working

In **North Wales**, there had historically been a very high use of police custody as a place of safety. Through effective partnership working and a willingness to resolve the issues, all the relevant agencies (including local councils, health board, ambulance service and police) developed a single multi-agency protocol, led by North Wales Police. This was introduced in March 2012, and officers and health staff were provided with training in the revised procedures. Since its introduction, North Wales Police has seen a significant reduction in the use of police stations as a place of safety, from 76 in the period between 01 April 2011 and 31 August 2011, to just 14 in the corresponding period in 2012.

In March 2011, **Kent Police** and Kent and Medway Partnership Trust ran a multi-agency learning event which used Lean Principles<sup>47</sup> to review the processes involved in the use of section 136, and to identify problems and inefficiencies in the processes. The event highlighted a number of proposed new processes designed to improve the outcomes for individuals detained under section 136. Joint agency reviews of use of section 136, applying Lean or other modernisation principles, are good practice.

### Involvement of crisis teams

In **Kent**, crisis teams were involved early on in cases of people who appeared to show mental disorder (from the scene, and before detention). This often gave officers options, which they welcomed, other than detention under section 136. The crisis teams were available all day, every day.

<sup>47</sup> Lean Principles involve a systematic approach to identifying and eliminating waste through continuous improvement.

## **Recording and monitoring the use of section 136**

In **Leicestershire**, we found excellent arrangements for recording (via a vulnerable person report) and accessing previous police involvement with an individual, using a tool which searched several force IT systems.

## **Quality assurance**

In **Gwent**, we found that the force had an excellent system for collating information about detentions under section 136, regardless of where the individual had been taken to as a place of safety. The data was analysed in a number of ways to establish patterns and trends. Gwent Police also used systems to flag individuals who had been detained more than three times. In these instances, the sergeant responsible for monitoring the data contacted the Health Board directly to ensure that the individual was receiving appropriate care and treatment. This database was populated using data supplied by the detaining officers and health professionals. All section 136 detentions were subject to review by a custody inspector and, if it was considered that section 136 had been used inappropriately, the officer's line manager was informed, action taken as a result.

## **Training**

In **Lancashire**, an AMHP delivered comprehensive training on section 136 legislation, policies and procedures to front-line officers.

In **Leicestershire**, a police office had been established within a hospital's mental health unit, and the officers based there had created an intranet. This regularly published hosted information bulletins for frontline officers in relation to dealing with mental health problems.

In **North Wales**, following the introduction of their revised multi-agency protocol, a programme of face-to-face awareness training was provided to front-line officers and health staff. This was supported by information and a video blog on the force intranet. Officers told us, however, that there had been initial teething problems with the roll-out of the training to both police and health staff, with

some health staff initially unaware of the new protocol. This led to detained persons being refused access to a health-based place of safety. With an effective escalation process and good relationships between police and health staff, these issues were resolved.

## Recommendations

### **To the UK Government and Welsh Government**

The Codes of Practice should be amended to bring detention times for those detained in police custody under section 136 in line with the PACE, allowing a maximum of 24 hours in police custody (out of the maximum of 72 hours for which they can be detained overall). The period of detention should be subject to regular, independent reviews by both police and health officials to ensure that:

- action is taken to transfer the detained person to a health-based place of safety as soon as is practicable; or
- an assessment is carried out as soon as possible at the police station, where any transfer to a health-based place of safety may cause unnecessary delay.

Any assessments which are needed, once the 24 hours in police custody has elapsed, should be undertaken in a hospital.

**Timescale:** As soon as possible.

### **To the Health and Social Care Information Centre, Welsh Government and mental health service providers**

A data field should be added to the Mental Health Minimum Data Set held by the Health and Social Care Information Centre to collect data on the following:

- on each occasion that an individual brought by police to a health-based place of safety is not accepted into that health-based place of safety, stating the reason why he or she remained in police custody;
- on each occasion that a person under the age of 18 years is brought to and/or received into a health-based place of safety under section 136.

The information collected by the Welsh Government should also include the above data and the current national form used to record section 136 detentions should be amended accordingly.

**Timescale:** As soon as possible.

### **To College of Policing, the Royal College of Psychiatrists, the College of Social Work, police forces and mental health service providers**

The College of Policing, the Royal College of Psychiatrists, the College of Social Work, police forces and mental health service providers should work together to develop and deliver joint training to staff. This should incorporate information on legal powers and local protocols and include regular refresher training. Service providers and Local Social Services Authorities with responsibility for the provision of AHMPs should ensure that those 'bank'<sup>48</sup> and rotational staff who are likely to deal with the police and those detained under the Mental Health Act 1983 understand and comply with local procedures.

**Timescale:** This should begin immediately.

### **To Clinical Commissioning Groups and local social services**

Clinical Commissioning Groups and local social services should assure themselves that they have commissioned sufficient capacity to meet the demand for assessment under section 136, and that multi-agency working is effective. This includes commissioners in local social services authorities with responsibility for ensuring that the number of AMHPs is sufficient to meet the need for assessments under the Mental Health Act 1983. Commissioners should follow the *Guidance for Commissioners: Service Provision for Section*

<sup>48</sup> Bank staff are those who are temporary and can work in different locations and departments.

136 of the *Mental Health Act 1983*, published by the Royal College of Psychiatrists<sup>49</sup>.

**Timescale:** As soon as possible, but by April 2014 at the latest.

### **To NHS England and Local Health Boards (Wales)**

NHS England and Local Health Boards in Wales should ensure that local commissioning of mental health services is appropriate and provides sufficient capacity and resilience to meet demand. This should be in line with those areas where police custody is currently only used in exceptional circumstances.

**Timescale:** This should begin immediately.

### **To Social Services and health organisations**

Commissioners and providers of social services and health services should ensure that they identify periods of demand for the reception and assessment of persons detained under section 136 and that they effectively manage resources to meet this demand.

**Timescale:** As soon as possible, but by April 2014 at the latest.

### **To Health and Wellbeing Boards (England) and Local Health Boards (Wales)**

Health and Wellbeing Boards in England should include section 136 provision as part of their Joint Strategic Needs Assessment. Health and Wellbeing Boards and Local Health Boards in Wales should establish a process to oversee and quality assure the use of section 136 at a local level. This should include working with the police and other interested parties.

**Timescale:** This should begin immediately.

<sup>49</sup> *Guidance for Commissioners: Service Provision for Section 136 of the Mental Health Act 1983, (Position Statement PS2/2013)*, Royal College of Psychiatrists, 2013.

## **To Ofsted, HMIC, CQC, HIW, HMI Probation, HMIP and HMCPSI**

Ofsted, HMIC, CQC, HIW, HMI Probation, HMIP and HMCPSI should examine and highlight as part of their multi-agency inspections of child protection arrangements the inappropriate use of police custody as a place of safety for children under 18 years (who are detained under section 136).

The CQC and HIW should use their combined powers under the Mental Health Act 1983 and the Health and Social Care Act 2012 to develop a robust approach to the regulation of mental health providers. The objective must be to hold services to account for their responsibilities under the Codes of Practice – in this instance, to ensure that places of safety in healthcare settings for the reception and assessment of individuals detained by the police under section 136 are appropriately staffed and secure.

**Timescale:** From June 2013.

## **To police custody officers**

Police custody officers should ensure that a full explanation is recorded in the custody record as to why a person detained under section 136 has not been accepted into a health-based place of safety.

**Timescale:** This should begin immediately.

## **Next steps**

The use of police custody as a place of safety would be reduced if that part of the Mental Health Act 1983 which designates police stations as places of safety were repealed. However, this would put pressure on health trusts and, ultimately, could have a detrimental effect on those suffering from mental disorder, by increasing the waiting times for assessments. We believe that our recommendations, if adopted, will reduce the use of police custody as a place of safety, without the need for legislative change.

We will closely monitor the use of police custody as a place of safety in our joint police custody inspections and if we do not find a significant reduction in its inappropriate use by April 2016, we will seek the implementation of the following recommendation:

The Mental Health Act 1983 should be amended to remove a police station as a place of safety for those detained under section 136, except on an exceptional basis.

An 'exceptional basis' should be clearly defined in law and should reflect the wording currently used in the Codes of Practice, namely, where a person's behaviour would pose an unmanageably high risk to other patients, staff or users of a healthcare setting.

## Appendix A

### Supporting guidance

Both the Home Office and ACPO have issued guidance in respect of the use of police stations as a place of safety.

Home Office Circular 007/2008 states:

*Every effort should be made to ensure that a police station is used only on an exceptional basis in cases, for example, where the person's behaviour would pose an unmanageably high risk to other patients, staff or users of a healthcare setting. It is preferable for a person thought to be suffering from mental disorder to be detained in a hospital, or other healthcare setting, where mental health services are provided (subject, of course, to any urgent physical healthcare needs they may have).*

*Guidance on Responding to People with Mental Ill Health or Learning Disabilities*, ACPO, 2010, paragraph 6.4.2.1, states:

*Although the police will sometimes agree that it is appropriate to take the person to a police station (for example, if an individual is violent), at other times they have to do this because NHS facilities are unwilling to detain the person [under section 136]. This has significant implications for policing. For example, when police cells are used as a place of safety, the police obligations under Articles 2, 3 and 8 of the ECHR to protect the safety of people detained in this way. Among other things, this requires psychiatric assessment and treatment and expert monitoring – standards which are difficult for police custody suites, even the best equipped, to meet. In addition, most section 136 detainees are in police custody as a place of safety outside normal office hours, and so can be adversely affected by any delays, as fewer people are readily available to carry out the assessment process.*

*This situation is clearly not the intent of the MHA Codes of Practice and all forces should ensure they have access to suitable **non-police** places of safety. This may require significant discussion and cooperation between police and healthcare trusts, to ensure not only sufficient places of safety across each force area, but also the provision of sufficient resources.*

The Royal College of Psychiatrists *Standards on the Use of section 136 of the Mental Health Act 1983 (2008)* and *Standards on Use of section 136 of the Mental Health Act 1983 in Wales* (forthcoming) encourages all forces to work with local partners to deliver those standards through local protocols.

## Previous studies into police stations as a place of safety

The use of a police station as a place of safety has been subject of several specific reports.<sup>50</sup> In 2008, the IPCC reported that police stations were commonly used as a first resort rather than the last. Also in 2008, Lord Bradley was commissioned by the then government to carry out a wide-ranging review into a range of issues related to people with mental health problems or learning difficulties in the criminal justice system. His report,<sup>51</sup> published in April 2009, made two recommendations in respect of section 136:

- all partner organisations involved in the use of section 136 of the Mental Health Act 1983 should work together to develop an agreed protocol for its use;
- discussions should immediately commence to identify suitable local mental health facilities as the place of safety, ensuring that the police station is no longer used for this purpose.

This second recommendation is particularly noteworthy, as it was made a number of years after the Department of Health had made available capital monies to all mental health services in England to facilitate the equipping of suitable premises which could be designated “places of safety” in local mental health hospitals (with the expectation that all local secondary services would have suitable facilities).

<sup>50</sup> *Police Custody as a ‘Place of Safety’*, Independent Police Complaints Commission, 2008; *Standards on the Use of Section 136 Mental Health Act 1983 (England and Wales)*, Royal College of Psychiatrists, 2011; *Responding to People with Mental Ill Health or Learning Disabilities*, ACPO, 2010.

<sup>51</sup> *The Bradley Report: Lord Bradley’s Review of People with Mental Health Problems of Learning Disabilities in the Criminal Justice System*, 2009.

## Appendix B

### Custody record analysis

Police custody suites inspected:	7
Cases per custody suite:	10
Total cases:	70

The demographics of the sample were as follows:

- 49 (70%) male and 21 (30%) female;
- age range from 16 to 57, including 16 and 17 year olds.
- the average age was 36 years old.
- six detained persons in the sample were from a black and minority ethnic background, and 62 from a white background. Ethnicity of the remaining two detained persons was not recorded in the custody record;
- five detained persons were identified as foreign nationals; 62 as British; and the nationality of three persons was not known.