



IN CUSTODY

**Children and young people detained in custody under the
Mental Health Act (Section 136) in North East England**

June 2013



'IN CUSTODY'

Children and young people detained in police custody under the Mental Health Act (Section 136) in North East England, 2011

1 Background

- 1.1 In November 2012, MHNE became aware of a BBC article¹ regarding a national study showing that 347 children and young people up to the age of 18, who were detained under Section 136 (see Appendix 2) of the Mental Health Act (2007) in 2011, had been held in police cells, the reason being that Health Based Places of Safety (HBPS) were either unavailable or unsuitable. Guidance under the Mental Health Act advises that an individual detained under s136 of the Act will be taken to a HBPS (such as a hospital, care home or accident and emergency) and assessed for possible mental health issues; however if a HBPS is geographically too far, has no capacity or the individual is violent/abusive and is at risk of harming them self or another, then they will be taken into custody for examination.
- 1.2 Figures quoted in the article, which were revealed through a Freedom of Information request, show that 35 of 42 police forces that responded to the study had held a young person in this way. A number of these young people were detained for 72 hours, some of whom were as young as 11 years old. MHNE believes that for an individual suffering mental distress, particularly a young person, being held in such a location would only exacerbate the situation and could be detrimental to their mental health and well being. MHNE, therefore, embarked on research to see if any similar incidents had occurred in the North East region.
- 1.3 MHNE consulted with member and partner organisations (approximately 375 voluntary and community sector organisations whose work is linked to mental health and well being) to see if they knew of such detentions in the North East. MHNE received much anecdotal evidence that this had occurred.
- 1.4 MHNE decided to work in liaison with "Young Minds" a national organisation, to report back to members with the aim of devising a collaborative approach as a sector that will ensure that any young people in the region in such circumstances are treated compassionately and with dignity.
- 1.5 MHNE has liaised with the Police and Crime Commissioners (PCCs) and officers/staff from the three North East police forces, all of whom have been both keen and receptive in aiding MHNE with this research.
- 1.6 This issue is not restricted to the North East region, as recognised in other reports published in recent years regarding other parts of the country. In compiling this research MHNE reviewed the findings of The Bradley Report², which conclusively shows the crucial role of the police in supporting effective interventions at this early stage of the criminal justice system. The report explores methods of how offenders with mental health problems or learning disabilities could be diverted from the criminal justice system to other services, and what the barriers are to such diversion. It makes a total of 82 recommendations for agencies working with those with mental health and

¹ BBC: Children held in police cells under Mental Health Act - Nicola Beckford
<http://www.bbc.co.uk/news/uk-20377493>

² The Bradley Report (April 2009) – The Rt Hon Lord Bradley

learning disabilities in the criminal justice system, almost all of which were accepted by the Government at that time. However this report was published in 2009 and, despite the acceptance of its recommendations and a willingness to improve matters from all parties involved, individuals, and in the case of this report young people, are still being detained in police custody under s136.

- 1.7 All North East police forces define a young person as an individual under the age of 18. This report does not use the term 'offenders', as MHNE sees those in such a position as individuals in need of support. However, several of the reports referenced adopt the Nacro³ definition of an 'offender' with mental health problems, which is as follows: "Those who come into contact with the criminal justice system because they have committed, or are suspected of committing, a criminal offence, and who may be acutely or chronically mentally ill... It also includes those in whom a degree of mental disturbance is recognised, even though it may not be severe enough to bring it within the criteria laid down by the Mental Health Act 1983 (now 2007)."

2 Liaison with Police and Crime Commissioners (PCCs)

- 2.1 MHNE contacted the police forces for Durham and Darlington, Northumbria, and Cleveland to gather the necessary evidence to tackle this issue and determine the information required. From contact with the PCCs in December 2012, MHNE found that they too voiced similar concerns and agreed that detentions under s136 where a young person is held in custody are unacceptable. Frustration at the lack of available provision for those with mental health issues was a common theme raised by police personnel.
- 2.2 MHNE received a report from Durham Police Force through Ron Hogg, PCC for Durham, which showed that five young people had been detained under s136 and taken to a police station/custody in 2011. Three of these cases referred to the same individual who had been in the care of the local authority and is known to self-harm. MHNE met with Ron Hogg to discuss concerns and to receive further information on the process of s136. Correspondence with Cleveland Police Force showed that ten such detentions had occurred in 2011.
- 2.3 Contrary to the anecdotal information MHNE had received, Northumbria Police Force reported that only one detention had taken place in 2011. MHNE queried this figure with the Force, and subsequently met with Chief Superintendent Gordon Milward, Head of Criminal Justice Department for Northumbria. MHNE sits on the Disability Advisory Group to Vera Baird QC, PCC for Northumbria, where these issues were discussed.
- 2.4 This communication and discussion, as well as several reports published by the forces, gave MHNE sufficient understanding of the current processes and procedures of s136 from the initial emergency phone call up to the point of release.

3 Contact with Young People's Services and other interested parties

- 3.1 MHNE approached Yvonne Collins, regional project worker for Young Minds (a member organisation and long standing contact of MHNE) who provided anecdotal evidence of young people held in police cells in these circumstances and the negative impact this custody had on mental health. MHNE and Young Minds composed questions to be put to the PCCs, and Young Minds also took part in the meeting with Chief Superintendent Milward.
- 3.2 MHNE consulted with Change Ur Mind – a group of around 40 young people with experience of mental illness as service users, carers or through a close friend/family member and who form the North East Youth Board on Mental Health. Change Ur Mind suggested additional issues to discuss

³<http://www.nacro.org.uk>

with the police, as well as picking up on potential shortcomings in this research, and also helped to provide a direct perspective from young people; again several anecdotes of such detentions were given at one of their monthly meetings.

- 3.3 George Scott, High Sheriff of Tyne and Wear, is a long-time supporter of MHNE and has followed the progress of this research.

4 Findings

- 4.1 Liaison with Northumbria, Cleveland and Durham Police forces, as well as several groups representing and working with young people, has allowed MHNE to compile a comprehensive table of findings in relation to young people held in police cells under s136 during 2011– see Appendix 1.
- 4.1.1 All North East police forces detained at least one person under the age of 18 in a police cell/custody suite whilst under s136 of Mental Health Act and 16 detentions occurred in total.
- 4.1.2 Personnel from all forces have shown frustration in regard to dealing with such cases and feel unable to act in a compassionate manner due to current guidelines, which state that an individual must be detained in a cell if a HBPS is unavailable, and lack of provision.
- 4.1.3 Mental health is a priority amongst the police – Northumbria police and Vera Baird QC has shown an interest in increasing the understanding of mental health issues among constables and is keen to raise the involvement of mental health service users and providers in improving procedures via consultation and community engagement. Cleveland has expressed an interest in undertaking a review of their resources and training; Ron Hogg is also engaging with community groups including those working in mental health and/or young people to avoid unnecessary detentions that would lead to the stigma of a criminal record, where possible, by building stronger relations between constables and the community to allow them to quickly identify people with mental health problems as such.
- 4.1.4 Guidelines by the Royal College of Psychiatrists⁴ advise that anyone detained under s136 should be in police custody for a maximum of three hours prior to, including and following medical examination as best practice. Anecdotal evidence suggests that, in this region, young people may often held between four or five hours, or even more. Guidance from Police and Criminal Evidence Act (PACE) dictates an obligation of the police to ensure a person detained under s136 will be assessed as soon as possible.
- 4.1.5 At the time of detention a full medical examination is carried out, but there is an issue around arranging for the timely arrival of all medical professionals to coincide with the arrival of the detainee. If the assessment is to take place at a police station then an approved social worker and registered medical practitioner must be called as soon as possible to interview and examine the detainee.
- 4.1.6 Medical examinations do not always include a mental health professional. Best practice, as stated in guidance by Royal College of Psychiatrists, dictates that a mental health professional should be present to ensure an accurate evaluation.
- 4.1.7 Whilst all three police forces have protocols to deal with s136 and other protocols when dealing with detained young people there is no specific protocol when both overlap.

⁴ Sections 135 and 136 of the Mental Health Act 1983 - Good Practice Guidance (2012) – Welsh Government

- 4.1.8 Training is patchy across the board and is usually delivered in-house; again training sessions focus on either young people or mental health and not both combined. Cleveland and Northumbria forces have received specific mental health training with professionals from Tees Esk and Wear Valley (TEWV) NHS Foundation Trust.
- 4.1.9 All recorded detainees were transported to custody in a police vehicle. Correspondence with police has shown that it is difficult to arrange for other modes of transport to be available at all times in such circumstances, as it is impracticable and costly to have such vehicles always on standby.

5 Conclusion

- 5.1 Young people suffering from mental distress who have been detained under Section 136 of the Mental Health Act can arguably be described as having been treated as criminals by being placed in police cells, which would only serve to aggravate their distress, rather than being treated as individuals in need of urgent support.
- 5.2 There is the additional and much wider issue of young people being detained for matters related to substance/alcohol abuse. However the focus of this research is on young people who are detained under s136 for suffering mental distress, thus being in need of immediate care.
- 5.3 It quickly became evident that our concerns were shared by all parties in this research: the three North East police forces and their respective commissioners all wish to see an improvement, particularly through preventing these young people from coming into police contact which would undoubtedly alleviate the stress caused for young people in these circumstances as well as saving capacity and money for the police. There is also real determination amongst different agencies (both statutory and voluntary) to work together in supporting these young people.
- 5.4 All three police commissioners and police personnel have been very supportive in attempts to map the situation in the North East of England and have also indicated their eagerness to work in partnership with others to improve the current situation.
- 5.5 Throughout this research, it became apparent that the process and procedure of s136 had many more complications and issues than originally anticipated. This meant that MHNE had to communicate with the police over a prolonged period and ideas had to be repeatedly exchanged between MHNE, Young Minds and other contacts. This has resulted in a comprehensive overview of the current situation throughout the region.
- 5.6 Although a reported sixteen detentions took place in 2011, anecdotal evidence suggests that more young people were detained in custody than the figures suggest. It is possible that there is a difference in the way these cases have been recorded. Those who gave the anecdotes already suffered mental health problems and reported deterioration in their condition following the incident.
- 5.7 All police forces have been consistently cooperative with MHNE, and Durham Police has informed MHNE that these detentions are still occurring after the period covered in this research. MHNE believes that there is a lack of awareness of mental health issues among officers on the ground leading to difficulties in identifying individuals. Guidance and protocol needs to be reviewed with input from those who have experienced mental illness. For instance, guidance in the Mental Health Act indicates that these young people should not be placed into custody unless in exceptional circumstances and there is no other option available. However custody is still being used illustrating clear gaps in preventive work and a possible lack of awareness of mental health issues among officers.

5.8 Since publication of this report the Care Quality Commission has produced a similar report⁵ on a national basis, reflecting our findings.

6 Recommendations

6.1 Consider the possibility of establishing a Newcastle Working Group composed of representatives of Northumbria Police Force and various local social services and voluntary agencies, possibly chaired by Vera Baird QC. Young people's involvement in this group, in particular the involvement of young mental health service users/carers will enhance the group's understanding of the overall issues and help solutions be effective and sustainable. The group would feedback to Northumbria, Durham and Cleveland police for the purpose of the following:

6.1.1 Ensuring that if in outstanding circumstances a young person is taken to a police station that all other possibilities to a cell are explored as improvised HBPS. For example Juvenile Detention Rooms, with the individual accompanied by a suitable number of police personnel and a Community Psychiatric Nurse (CPN) if possible. Such rooms being a conducive, non threatening environment will help to lessen any aggravation.

6.1.2 Exploring the possibility of suitable modes of transport to custody being available, for example an ambulance or unmarked/civilian vehicle, by working with other police forces and statutory care providers. There is potential for a region-wide approach to this to ensure a greater number of vehicles are available, and so that good practice regarding suitable transport can be shared across all forces in the North East.

6.1.3 Ensuring a mental health professional is present when assessing a young person for mental health problems in custody. A professional who works with or has experience of working with young people is best suited to this.

6.1.4 Establishing training in mental health awareness and mental health and young people for relevant staff in all three forces. This could be delivered by external voluntary/statutory sector agencies with the involvement of service users/young service users where possible. It would then be desirable that personnel who have received this training are the first point of contact, where possible, when a young person shows signs of mental distress and in cases where detained individuals have displayed violent or risky behaviour. Attempts can be made to defuse the situation or 'talk them down' until a medical examination can take place. MHNE and its members are prepared to work with appropriate staff in regards to training.

6.1.5 Building on existing relationships with current HBPS, statutory services and community groups in an attempt to identify new locations to be used as HBPS, to avoid gaps in provision and so that capacity is not an issue. For example by utilising voluntary and community services that have experience of dealing with young people in mental distress. The restructuring of the NHS gives the opportunity for the police and other agencies involved in the process to engage and consult with NHS England and the North East Clinical Commissioning Groups (CCGs) to ensure that appropriate levels of mental health services are commissioned.

6.1.6 Emphasising community engagement to build stronger links with mental health communities so police are aware of those with mental health issues through visits to service user and carer groups, including those of young people. The aim is to allow the police to recognise these individuals and their mental health problems so they can be readily identified from the first instance of coming into

⁵ A Criminal Use of Police Cells? (June 2013) - Care Quality Commission and Healthcare Inspectorate Wales

contact with the criminal justice system. MHNE's large and diverse member base is available to be utilised so that the police can readily contact these groups.

- 6.1.7 Investigating ways in which a greater focus can be placed on preventing children and young people in need of mental health support from coming into contact with the criminal justice system, such as drawing on and forming partnerships with voluntary and community sector organisations that work to support young people's mental health, as well as others working in fields such as homelessness and substance abuse which can be linked to mental ill health. Examples include Streetwise, a Newcastle based drop in centre for young people, Tyneside Mind, which provides counselling to young people and Young Minds, the national charity for young people and mental health.
- 6.1.8 Drawing on examples of good practice regionally and in relation to methods of prevention already in place, for example the Cleveland police force's Street Triage team in Middlesbrough, which could be extended to deal with young people and be replicated across the board. If police officers are called to an incident and consider someone may have a mental illness, learning disabilities or problems with substance misuse, they are able to request the Street Triage Team. This team would include a Community Psychiatric Nurse (CPN), who would attend the incident and carry out an assessment of the individual's mental state and advise if detention is necessary. The team, which currently focuses on adults, was recently established (June 2012) by Cleveland Police and TEWV and is proven to negate unnecessary arrests as well as saving both the time and resources of Cleveland police force (see Appendix 3 for details of monies saved). The Triage scheme is currently being piloted in 4 areas of the UK.
- 6.1.9 Ensuring an individual is fully aware of their right to consult a solicitor. PACE Codes of Practice apply to anyone detained under s136 and PACE Code C⁶ ensures the ability to receive independent free legal advice in private from a solicitor. The Mental Health Act Code of Practice⁷ confirms that, although the Act uses the term 'remove', detention under s136 is deemed to be an 'arrest'. This means that police have the power to search the detained person and take them to a police station. Under these circumstances it should always be considered that a solicitor is contacted and preferably a solicitor who is on the Mental Health Panel who will have extensive experience in dealing with mentally distressed individuals.
- 6.1.10 Establishing clear pathways for anecdotal evidence of s136 detentions in custody, provided by individuals in the form of anonymous case studies, to be cross referenced with current systems by police personnel to check for discrepancies. MHNE, in conjunction with Young Minds, will seek such anecdotal evidence to examine with police.
- 6.1.11 Establishing procedures for the monitoring of and continuous reviewing of protocols to include guidance on dealing with young people with mental health issues. Current protocol dictates separate procedures when dealing with young people or when dealing with those with mental health problems but there is no protocol for when these factors overlap.
- 6.1.12 Developing clearer guidance so that all other options are exhausted before detaining a young person in custody, and that reasons for resorting to custody are fully recorded by police personnel. This process would include regular reviews of this information by senior police personnel, if possible, involving the PCC.

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June 2013

⁶ Police and Criminal Evidence Act (1984) PACE Code C (revised)

⁷ Mental Health Act Code of Practice (1983) – Department of Health

Appendix 1 – Comparison of information on detentions, methods and protocols received from North East Police Forces

Police Force	Number of detentions of young people in 2011	Location detained	Medical support given	Form of transport used	Follow-up procedure	Specific protocol for Mental Health Act when dealing with young people	Specific training for dealing with young people with mental health difficulties	Provision made when dealing with young people
Durham	<p>5 detentions - 3 of which were the same individual.</p> <p>All 5 detainees were affected by drink and/or drugs.</p>	Custody Suite	<p>On judgement - Officers often remain with those detained under the Act while at hospital (particularly when under influence of alcohol, violent etc.) to reduce risk of harm to healthcare professionals, PCs and detainee.</p>	Police Vehicle	<p>Relevant social services are contacted whilst individual is in custody. Further assessments would be arranged when individual is back into the community if required.</p>	<p>Reviews of detainees with mental health issues are carried out weekly. Four custody/ PACE inspectors are able to challenge unnecessary arrests.</p> <p>Supervision (via leadership on the ground) on what constitutes a 'place of safety' is given, with police cells seen as a last resort.</p>	<p>Training is delivered in-house by the Constabulary.</p>	<p>In general every effort is made not to bring any youth who is detained under s136 to a Police station, however local partnerships have decided that any violent or drunk persons will be taken to a police station for assessment when safe and fit enough to be assessed.</p> <p>Custody Sergeants will risk-assess at much higher levels when dealing with a young person and they are placed in a camera cell or under constant observation.</p>
Cleveland	<p>10 detentions:</p> <ul style="list-style-type: none"> • 1 x 14 year old female • 1 x 15 year old female • 4 x 16 year olds (2 male & 2 female) • 4 x 17 year olds (1 female & 3 male) 	Custody Suite	<p>Examined by GP whilst in custody</p>	Police Vehicle	<p>Individuals are referred to local CAMHS team</p>	<p>No specific protocol or policy. Any process or procedure that is pertinent to people under 18 years is catered for within the Mental Ill Health: Places of Safety and Conveyance policy.</p>	<p>All initial police training includes a section on Vulnerability and refresher packages are available upon request</p>	<p>Every effort is made not to bring any youth who is detained under s136 to a Police station.</p> <p>Custody Sergeants will risk-assess at much higher levels and ensure that the detained person is placed in a camera cell or on constant observations.</p>

Police Force	Number of detentions of young people in 2011	Location detained	Medical support given	Form of transport used	Follow-up procedure	Specific protocol for Mental Health Act when dealing with young people	Specific training for dealing with young people with mental health difficulties	Provision made when dealing with young people
Northumbria	1 detention	Custody Suite	Examined by Forensic Medical Examiner (FME) whilst in custody If the individual is suspected to be under the influence of alcohol or drugs or is displaying violent/abusive behaviour they would first be assessed by the FME pending assessment with the CRISIS Team.	Police Vehicle	Referred to Sunderland Social Services	The protocol to deal with s136 of the Act has been refreshed. A new protocol has been developed in October 2012 to deal with s135 of Act.	All operational staff receive training – including sessions covering the Mental Capacity Act and the process for contacting HBPS to ensure detainees' arrival is timely with medical professionals. Training also covers what constitutes a suitable mode of transport and place of detention.	The Mental Health Protocol followed for adults would also be relevant for a youth. They would not be brought to a police station unless they had other issues e.g. influence of alcohol, drugs, violent behaviour etc.

Appendix 2 – Mental Health Act 1983 (updated 2007) Legislation ⁸

Section 136

If a constable finds in a place to which the public have access a person who appears to them to be suffering from a mental disorder and to be in immediate need of care or control, the constable may if they think it necessary to do so in the interests of that person or for the protection of others, remove that person to a place of safety for a period of up to 72 hours.

Section 135 (1)

If a person believed to be suffering from a mental disorder; has been, or is being, ill-treated, neglected or kept otherwise than under proper control in any place, or being unable to care for themselves, is living alone in any other place, the justice of the Peace may issue a warrant authorising a Constable to enter, if need by force, any premises specified in the warrant in which the person is believed to be and if thought fit, to remove them to a place of safety. In this case the warrant is obtained by the approved mental health professional (AMHP) but executed by the officer with the AMHP and a section 12 approved doctor in attendance.

Section 135(2)

If it appears to a Justice of the Peace, on information on oath laid by any Constable or other person who is authorised by or under the Act (For cases where a patient is reported AWOL from hospital this could be a member of staff from the hospital where a patient has gone AWOL from) to take a patient to any place, or to take into custody or to retake a patient who is liable under the Act, to be taken or retaken; that there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice, and that admission to the premises has been refused or that refusal of such admission is apprehended, the Justice may issue a warrant authorising any Constable to enter premises, if need by force, and remove the patient to a place of safety.

⁸ Mental Health Act 1983 - Elizabeth II, 1983

Appendix 3 –Review of Custody and Triage Process Cleveland (May 2013): Street Triage Team August - September 2012⁹

Adult mental health services have operated a daily street triage team between 4pm and midnight.

The below table shows the current system and shows three time slots, 4pm till midnight, Midnight till 8am and 8am till 4pm, the Street Triage Team only being on duty from 4pm – midnight.

Costs incurred when using either a hospital or custody as a place of safety								
Custody	4pm-12am	12am-8am	8am-4pm	Section 12 approved doctor costs	Approved Mental Health Professional (AMHP) costs	Police costs	MHA Claim	Total Costs
68 persons	18	28	22	£4,050	£2,658	£113,240	£14,240	£142,005
Hospital	4pm-12am	12am-8am	8am-4pm	S12 costs	AMHP costs	Police costs	MHA Claim	Total Costs
68 persons	27	21	20	£5,550	£3,264	£4,896	£15,660	£29,370

Street Triage Team (savings made when STT deal with these cases and no S12, AMHP or Police custody is required)								
Custody	4pm-12am	12am-8am	8am-4pm	S12 Costs	AMHP costs	Police costs	MHA Claim	Total Savings
111 persons	111	0	0	£5,050	£6,068	£183,340	£10,062	£205,140

⁹ Review of Custody and Triage Process (May 2013) – Cleveland Police Force

References

- i. **Children held in police cells under Mental Health Act** (November 2012) - Nicola Beckford, BBC
<http://www.bbc.co.uk/news/uk-20377493>
- ii. **The Bradley Report** (April 2009) – The Rt Hon Lord Bradley
- iii. **Nacro** – <http://www.nacro.org.uk>
- iv. **Police and Criminal Evidence Act (1984) PACE Code C** (revised)
- v. **Mental Health Act Code of Practice (1983)** – Department of Health
- vi. **Sections 135 and 136 of the Mental Health Act 1983 - Good Practice Guidance** (2012) – Welsh Government
- vii. **A Criminal Use of Police Cells?** (June 2013) - Care Quality Commission and Healthcare Inspectorate Wales
- viii. **Mental Health Act (1983, revised 2007)** - Elizabeth II, 1983
- ix. **Review of Custody and Triage Process** (May 2013) – Cleveland Police Force

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