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Deaths in police custody – the role of the custody officer

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Introduction

You are the custody officer at a police station in a predominantly residential area of Birmingham. It is around 1am. You're on night-shift. It has been an unremarkable night. The television is playing in a room behind the custody counter. You have the odd word with the custody assistant who is helping with the work as the night goes on.

Then, you receive a call over the radio from an inspector at the scene of the restraint of a violent prisoner. He is a few minutes away by police van. You should expect the detained man's arrival. The man requires medical attention, you are told, so you should call out a Forensic Medical Examiner in preparation. You question whether the man should be taken straight to hospital rather than to your custody suite, but he is brought to you.

You have been alerted to a problem, but you haven't seen the man, you don't know the detail of his condition. You don't know how serious it is. You do know he has been violent. You can only wait for him to arrive to make a call on how to deal with him.

A police van pulls up, with the detained man in the rear, accompanied by a number of officers who have been involved in restraining him. THEY have been with him for some time. THEY know how he has behaved, as well as how they have treated him themselves. However, YOU are the custody officer. This is YOUR domain. The wellbeing of this man, as well as the safety of everyone else in the custody suite, is YOUR problem.

It takes a number of minutes to bring him from the van and into a cell – minutes which will later become the focus of a great deal of attention. In the cell, this man is examined. He is not breathing. He will not start breathing again. Paramedics are called and efforts are made to resuscitate the man, but he is pronounced dead.

The custody suite is closed down. The investigation into the death in custody commences. You are suspended whilst the investigation takes its course. You are interviewed, charged, preparing to face trial. After all, the prosecution state, it was YOUR custody suite, the prisoner was YOUR

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responsibility, and YOU didn't act fast enough to save him.

What's more, there is a public campaign for justice that has been mounted by the friends and family of the man who has died. His death, they say, must not amount simply to another statistic in relation to young black men who die in police custody, with the officers responsible going unpunished.

This is the briefest summary of the position of the custody officer, charged with misconduct in a public office, in the criminal case that followed the death of Michael Powell in the Lozells area of Birmingham in September 2003. Let me emphasise immediately that the officer in question was acquitted, upon the direction of the judge, at the close of the prosecution case. However, the circumstances of the case serve to indicate the huge responsibilities, pressures and difficulties that go along with the position of custody officer.

Deaths in custody are relatively rare, but they happen. The consequences to the deceased are obvious, the consequences to the family and friends of the deceased are catastrophic. The impact on the lives of police officers who fall under suspicion in such cases also should not be underestimated.

The responsibility involved may be an attraction of the job of custody officer. In that role, you have a prime opportunity to prevent this kind of tragedy. However, you can also bet that, if things go wrong, you will be among the first to be held to account.

It is in this light that it is essential for those who work in this area, most particularly the police and custody officers themselves, to understand the role of the custody officer in dealing with the wellbeing of detained persons and the standards expected of them. Understanding those standards and implementing them is the key to avoiding error, avoiding criminal or civil liability and, most importantly, doing as much as can be done to eliminate avoidable deaths. For those who make police policy, focusing on those standards and improving them must also be in the interests of all those who are concerned with effective policing and public confidence in the work the police do.

The purpose of this talk is to explain by way of an overview the role of the custody officer in this context and the current standards expected of him or her. This will involve firstly looking at the legal significance of these standards – that is to say, why does it matter in law if I fall below the standard? (I have alluded to it already). Secondly, it will mean a tour around the principal material defining the custody officer's responsibilities – Code C of the Codes of Practice issued under the Police and Criminal Evidence Act 1984. Thirdly and lastly, it will involve a brief examination of how the standard has developed and where it may go from here.

Who am I to be giving you my opinion on such things? I am a criminal barrister. I am not a police officer and never have been. It means, of course, that I have never been in the position of having to deal with a casualty in a custody suite myself. I appreciate the distinction that there can be between high-minded statements of principle issued by lawyers in the safety and security of a courtroom, and the realities of doing the job day-in, day-out.

However I was, for around a year and a half, on the inside of the prosecution team dealing with ten police officers charged with misconduct in a public office arising from the death in custody of Michael Powell in 2003. I know the way in which police officers can and will continue to be held to account in courts and disciplinary tribunals. I know how the prosecution in such a case seeks to establish the duties and standards that the public can properly expect of police officers. I hope, then, that I am in a position to emphasise the importance of those standards and the material that tells us what those standards are.

The significance of the duty and standard of care

I have already explained that understanding the duties and standards expected of the police officer dealing with a detained person and implementing them constitute the key, not only to avoiding deaths, but avoiding legal liability should a death occur.

It may sound obvious, but it is worth spending a moment making clear why it is the case. Let's look at the two principal criminal offences that may arise from a death in custody.

The first is manslaughter by gross negligence. The ingredients of this offence were set out by the House of Lords in the case of R v Adomako [1994] 1 AC 171. Dealing with those ingredients, the Lord Chancellor, Lord Mackay of Clashfern, stated that for a person to be guilty of the offence, it must first be proved that he has been in breach of a duty of care towards the person who has died. His Lordship went on:

> 'If such breach of duty is established, the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and therefore as a crime. This will depend on the seriousness of the breach of duty committed by the defendant in the circumstances in which the defendant was placed when it occurred. The jury will have to consider whether the extent to which the defendant's conduct departed from the proper standard of care incumbent upon him, involving as it must have done a risk of death to the patient [or otherwise deceased], was such that it should be judged criminal.'

The offence of manslaughter requires proof, of course, that the defendant in question caused the death. Sometimes, whilst the prosecution allege that there has been a serious failing on the part of a police officer in dealing with a person who has died in police custody, it cannot be proved that the failing was a cause of death. In these circumstances, it may be that the officer is charged with the offence of misconduct in a public office.

The ingredients of that offence were clarified in the Court of Appeal's judgment in the case of the Attorney-General's Reference (No.3 of 2003) [2004] 2 CrAppR 366. Lord Justice Pill, in that case, made clear that in order to be guilty of the offence, there must have been a breach of duty by the public office holder concerned. He went on:

> 'There must be a serious departure from proper standards before the criminal offence is committed; and a departure not merely negligent but amounting to an affront to the

> standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder.'

In relation to both offences, then, there is the requirement for the prosecution to establish the duty that the defendant owes and the standard expected of him or her in the execution of that duty, in order that a jury can evaluate whether the duty has been breached and, if so, whether the defendant has fallen so far short of the proper standard as to make him guilty of a criminal offence.

Establishing the duty and standard is not always as easy as you might think. Spring 2005 saw the case of *R v Hickinbottom, Wood and Clark* at the Hull Crown Court, presided over by Mrs Justice Dobbs. This case concerned the death of Michelle Wood. She was a heroin addict, arrested in Louth in Lincolnshire for shoplifting. She was taken to Skegness police station, but later released by the custody officer – the first defendant – without charge. He, the prosecution stated, had formed the view that she was recovering from the effects of heroin she had taken earlier in the day. She was taken from the police station by the other two defendant police officers. She was not dropped home, but a number of miles from it by the side of the road. She had no money and no mobile phone. It was February 2003. She had in fact taken another drug – Procyclidine. Her body was later found in a field. She had died of hypothermia. The officers were charged with manslaughter.

The prosecution had to prove, amongst other things, that the defendants had fallen far below the standard expected of them in not taking Michelle Wood home and simply dropping her off, as the press would have it, in the middle of nowhere. However, the prosecution adduced no evidence, expert or otherwise, as to the standards expected of police officers in this regard. In the prosecution's submission, this was a matter of common conventional standards of behaviour, upon which the jury, ordinary members of the public, could form their own view.

It may be that a lot of people who read the press reports of the case would agree. However, at the close of the prosecution case, Mrs Justice Dobbs did not. When one reads her ruling on the matter, one can see why. Finding that there was no case to answer, Her Ladyship said this:

> 'In my view, where a professional person is charged with an offence of this kind, an allegation made against them in relation to their conduct during the course of their job, it will be necessary in most cases for the jury to have evidence, whether one calls it expert evidence or not, of the standards applicable within that job, whether it be common practice, guidance, rules or the like. It is not for the jury to determine what police officers should do in certain situations, but for them to determine in the light of what is accepted behaviour within the profession whether they fell below those standards and, if they did, to what extent and whether the extent was so bad as to be criminal.'

She went on:

> 'It is…said that the first defendant should have ordered the other two defendants to drop Michelle Wood at home. To consider whether the action he did take was reasonable, the jury would be entitled to know, for example, whether he could have just released a

> suspect or bailed person there and then from Skegness police station. Was he obliged to ensure that they were taken back to the place where they were arrested, given that it was not Skegness? If there is no policy or guidance on the subject, then what would be expected of a competent and careful custody officer? Those are just some of the unanswered questions using the case of the first defendant by way of example.
>
> The consequence of this lack of evidence is that the jury has no benchmark against which to judge: (a) whether in all the circumstances there has been a breach of duty of care; and (b) if so, whether that breach was so serious as to be criminal.'

This case was a lesson to those involved in prosecuting the defendants in the Michael Powell case of the necessity of producing evidence to establish the duty and standards expected. It should also be a lesson to those accused of such offences, and those defending them, of the need to scrutinise with very great care whether the prosecution really have established the standards to which they seek to hold the accused. For example – an example arising from the case I was involved with – if the prosecution seek to establish a standard by means of evidence of training given to officers on a certain topic, was that training really uniform across the force in question? Could a police trainer really guarantee the court that a particular point in the course of the training of one particular officer on one particular day was covered?

So how are the duties and standards established?

As Mrs Justice Dobbs stated, this can be done in a number of ways – expert evidence as to expected behaviour, evidence of policy, guidance, training.

In the case of the custody officer, the core document setting out the duties and standards towards the detained person is Code C of the Codes of Practice issued under the Police and Criminal Evidence Act 1984 – 'PACE.' One cannot understate the significance of the Code in this respect. Unlike with many other areas of policing and many other roles within the police, the Code serves to establish the duty of the custody officer and the standards expected with substantial precision. Of course, it does so for a reason – public concern that detained persons are dealt with properly, the importance of public confidence that we are not mistreated when we are detained against our will (albeit lawfully), the avoidance of deaths in such circumstances.

The Codes of Practice were established, in fact, for this very purpose – to give police officers clear guidance in a variety of circumstances and to bolster public confidence in the proper execution by police officers of their duties, following concern about police practices in the '70s. The Forward to the original Codes A to D stated:

> 'The Codes…reflect the views of the Royal Commission on Criminal Procedure, which reported in 1981, and the philosophy of the Police and Criminal Evidence Act 1984, in providing for clear and workable guidelines for the police, balanced by strengthened safeguards for the public.'

There is also no question but that the Code can be used in legal proceedings to set the standards

to which custody officers should be held. Section 66 of the Police and Criminal Evidence Act 1984 provided for the issuing of Codes of Practice as follows:

(1) The Secretary of State shall issue Codes of Practice in connection with –

(a) the exercise by police officers of statutory powers –
    (i) to search a person without first arresting him; or
    (ii) to search a vehicle without making an arrest; or
    (iii) to arrest a person;
(b) the detention, treatment, questioning and identification of persons by police officers;
(c) searches of premises by police officers; and
(d) the seizure of property found by police officers on persons or premises.

Section 39(1) of PACE states:

(1) Subject to subsections (2) and (4) below, it shall be the duty of the custody officer at a police station to ensure –

(a) that all persons in police detention at that station are treated in accordance with this Act and any Code of Practice issued under it and relating to the treatment of persons in police detention; and

(b) that all matters relating to such persons which are required by this Act or by such Codes of Practice to be recorded are recorded in the custody records relating to such persons.

Whilst section 67(10) of PACE makes clear that a failure on the part of a police officer to comply with any provision of a code shall not of itself render him liable to any criminal or civil proceedings, the next subsection goes on:

(11) In all criminal and civil proceedings any… Code shall be admissible in evidence; and if any provision of… a Code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

There should be no doubt, then, that Code C is of primary importance in establishing the legal responsibilities of the custody officer. In order to carry out the job in a professional way, to seek to eliminate avoidable deaths and to avoid criminal and civil liability, it is essential that custody officers know and follow the standards it sets.

Code C of the Codes of Practice

The current Code C came into effect as of 24 July 2006. It is, in fact, largely unchanged from the previous version, but certain specific matters relating to the detention and treatment of persons under the Terrorism Act 2000 are now dealt with under Code H. Code C is entitled: 'Code of practice for the detention, treatment and questioning of persons by police officers.' The relevance to the subject of deaths in custody is obvious.

The Significance of the Custody Officer in the Code

The significance of the custody officer within the Code is apparent as soon as one begins reading it. The first section – section 1 – deals with general matters. Paragraph 1.1 states:

> 'All persons in custody must be dealt with expeditiously, and released as soon as the need for detention no longer applies.'

Paragraph 1.1A goes on:

> 'A custody officer must perform the functions in this Code as soon as practicable. A custody officer will not be in breach of this Code if delay is justifiable and reasonable steps are taken to prevent unnecessary delay…'

Paragraph 1.2 makes clear:

> 'This Code of Practice must be readily available at all police stations for consultation by:
> • police officers
> • police staff
> • detained persons
> • members of the public.'

Pausing there – whilst these first paragraphs make the point we are for the moment concerned with, we can instantly see that this Code will not provide a solution for every situation a custody officer finds himself in. It cannot be followed like a simple flow chart to get to the right answer. It involves competing principles, in respect of which a custody officer will ultimately have to make a judgment.

Look at paragraph 1.1 – detained persons must be released as soon as the need for detention no longer applies. How should the custody sergeant in the case of Michelle Wood – the woman who died, having been released from custody in Skegness and dropped miles from her home – have taken this into account.

When does 'the need for detention' no longer exist? Is it simply as soon as it has been determined that the person will be released without charge and the paperwork completed, or as soon as a person has been bailed to return? With a person who is mentally disordered who needs to be kept in a place of safety for his own protection and that of the public, the 'need for detention' beyond such a point may be obvious. But what about the case of a recovering drug addict? As I say, the

Code is a vital instrument for setting out the duties of the custody officer, but it does not always provide simple answers. It is not a simple job.

The fact that it is the custody officer who takes responsibility for the detained person upon or immediately after that person's arrival at the police station is made clear by paragraph 2.1A:

> 'When a person is brought to a police station:
> • under arrest
> • is arrested at the police station having attended there voluntarily or
> • attends a police station to answer bail
> they should be brought before the custody officer as soon as practicable after their arrival at the station or, if appropriate, following arrest after attending the police station voluntarily. This applies to designated and non-designated police stations. A person is deemed to be 'at a police station' for these purposes if they are within the boundary of any building or enclosed yard which forms part of that police station.'

This was a point of considerable importance in the Michael Powell case, where one of the prosecution's principal criticisms of the defendants revolved around the time that Mr Powell was left in the back of the police van adjacent to the entrance to the custody suite. It would not have been an answer to the criticism that the detained person had not yet entered the custody suite.

It is as soon as practicable upon the detained person's arrival at the police station that the custody officer's duties kick in.

The Risk Assessment

One of the first requirements of the custody officer is to undertake a risk assessment around the detained person. This risk assessment and the actions that it necessitates form a core element of the officer's responsibilities.

Paragraph 3.5 (c) requires that the custody officer shall

> 'determine whether the detainee is, or might be, in need of medical treatment or attention.'

Notably, for its significance in legal cases, is the requirement at (d) to record the decisions made in relation to (c).

The nature of the assessment is further set out at paragraph 3.6:

> 'When determining these needs the custody officer is responsible for initiating an assessment to consider whether the detainee is likely to present specific risks to custody staff or themselves. Such assessments should always include a check on the Police National Computer, to be carried out as soon as practicable, to identify any risks highlighted in relation to the detainee. Although such assessments are primarily the

> custody officer's responsibility, it may be necessary for them to consult and involve others, e.g. the arresting officer or an appropriate health care professional…Reasons for delaying the initiation or completion of the assessment must be recorded.'

Note again the need to record any reasons for a delay in completing the assessment.

One must note also the fact that the risk assessment is not simply an assessment of the risk TO the detained person, but an assessment of the risks posed BY the detained person towards others.

This is extremely significant when considering whether a custody officer can be criticised for inaction towards the needs of a detained person. In the Michael Powell case, when the custody officer was interviewed, an explanation for delay in getting Mr Powell into the police station, examined and treated, was concern that he had been violent and may pose a risk to others. The custody officer's responsibilities extend not just to the detained person, but to all those in the custody area who may be affected. Again, it is an illustration of the fact that the Code provides guidance, but not an answer to every problem. At some stage, the exercise of a personal judgment by the custody officer, often weighing up competing concerns, has to be made.

The nature of the risk assessment is further set out in section 3. Let's look at the provisions there. Paragraph 3.8 states:

> 'Risk assessments must follow a structured process which clearly defines the categories of risk to be considered and the results must be incorporated in the detainee's custody record. The custody officer is responsible for making sure those responsible for the detainee's custody are appropriately briefed about the risks. If no specific risks are identified by the assessment, that should be noted in the custody record.'

Paragraph 3.9 goes on:

> 'The custody officer is responsible for implementing the response to any specific risk assessment, e.g.:
> • reducing opportunities for self harm;
> • calling a health care professional;
> • increasing levels of monitoring or observation.'

Paragraph 3.10:

> 'Risk assessment is an ongoing process and assessments must always be subject to review if circumstances change.'

And paragraph 3.11:

> 'If video cameras are installed in the custody area, notices shall be prominently displayed showing cameras are in use. Any request to have video cameras switched off shall be refused.'

So in short, the risk assessment process must be methodical and structured. The decisions taken must be recorded for future scrutiny (and in any case there will be CCTV footage available for inspection). The assessment process is ongoing – it must respond if the circumstances change. Lastly, it is of course the custody officer who bears the responsibility for making sure that others who are involved in dealing with the detained person know about any risks, and it is the custody officer who is responsible for 'implementing the response' to any particular risk identified. Vitally, for the avoidance of deaths in custody, these responses may include increased levels of monitoring and/or calling out a health care professional.

Such a health care professional may be a Forensic Medical Examiner, who may take some time to get to the police station. It may, in the circumstances, be an ambulance crew, if it is apparent that the detained person requires urgent medical attention. What is required is often for the custody officer to judge. Thus we can see how, in so many cases of death in custody, it is the custody officer who falls under suspicion if it is thought that appropriate medical assistance was not summoned as early as it should have been.

A number of particular groups are dealt with in the Code as requiring particular attention. It is worthwhile noting in passing paragraph 3.16, which deals with the need for assessment of mentally disordered persons detained under the Mental Health Act 1983 and brought to the police station:

> 'It is imperative that a mentally disordered or otherwise mentally vulnerable person, detained under the Mental Health Act 1983, section 136, be assessed as soon as possible. If that assessment is to take place at the police station, an approved social worker and a registered medical practitioner shall be called to the station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed, examined and suitable arrangements made for their treatment or care, they can no longer be detained under section 136. A detainee must be immediately discharged from detention under section 136 if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act.'

This provision reminds us that the need for medical examination be particularly pressing when one considers how difficult is can sometimes be to establish without such assistance whether the detained person is simply mentally disordered, or is suffering from the effects of prescription or non-prescription drugs, or is affected by some other physical condition, or a combination of factors. When one apparent condition can mask another, potentially dangerous condition, it is obviously all the more important to have the person medically examined as soon as possible.

The need for particular caution in this area is made clear in Annex E to the Code, entitled: 'Summary of provisions relating to mentally disordered and otherwise mentally vulnerable people.' Paragraph 5 of the Annex states:

> 'The custody officer must make sure a person receives appropriate clinical attention as soon as reasonably practicable if the person appears to be suffering from a mental disorder or in urgent cases immediately call the nearest health care professional or

> an ambulance. It is not intended these provisions delay the transfer of a detainee to a place of safety under the Mental Health Act 1983, section 136 if that is applicable. If an assessment under that Act is to take place at a police station, the custody officer must consider whether an appropriate health care professional should be called to conduct an initial clinical check on the detainee.'

Guidance on Appropriate Response to Risk

Section 3 of the Code deals, then, with the custody officer's responsibility to take appropriate steps to ensure the wellbeing of the detained person. But does the Code provide guidance on how to do that – in other words, what the 'appropriate steps' are? For example, does it tell the custody officer WHEN it will be appropriate simply to monitor the detained person more regularly than normal, or when it will be necessary to call an ambulance.

Such guidance as there is appears in section 9 of the Code and Annex H. Paragraph 9.2 provides:

> 'If a complaint is made by, or on behalf of, a detainee about their treatment since their arrest, or it comes to notice that a detainee may have been treated improperly, a report must be made as soon as practicable to an officer of inspector rank or above not connected with the investigation. If the matter concerns a possible assault or the possibility of the unnecessary or unreasonable use of force, an appropriate health care professional must also be called as soon as practicable.'

Again, this deals more with a responsibility, rather than how to exercise it. Paragraph 9.3 is more prescriptive:

> 'Detainees should be visited at least every hour. If no reasonably foreseeable risk was identified in a risk assessment, see *paragraphs 3.6 – 3.10*, there is no need to wake a sleeping detainee. Those suspected of being intoxicated through drink or drugs or having swallowed drugs, see *Note 9CA*, or whose level of consciousness causes concern must, subject to any clinical directions given by the appropriate health care professional, see *paragraph 9.13*:
> • be visited and roused at least every half hour
> • have their condition assessed as in Annex H
> • and clinical treatment arranged if appropriate.'

There are ways, therefore, in which the Code provides particular and practical guidance on what care is appropriate in particular circumstances.

Paragraph 9.4 is particularly important in ensuring that the medical treatment received is appropriate:

> 'When arrangements are made to secure clinical attention for a detainee, the custody officer must make sure all relevant information which might assist in the treatment of the detainee's condition is made available to the responsible health care professional.

> This applies whether or not the health care professional asks for such information. Any officer or police staff with relevant information must inform the custody officer as soon as practicable.'

A number of remaining paragraphs of section 9 lay down practical requirements in relation to the care of the detained person. The following are some examples. Paragraph 9.5 states:

> 'The custody officer must make sure a detainee receives appropriate clinical attention as soon as reasonably practicable if the person:
> (a) appears to be suffering from physical illness; or
> (b) is injured; or
> (c) appears to be suffering from a mental disorder; or
> (d) appears to need clinical attention.'

Paragraph 9.5A provides:

> 'This applies even if the detainee makes no request for clinical attention and whether or not they have already received clinical attention elsewhere. If the need for attention appears urgent, e.g. when indicated as in Annex H, the nearest available health care professional or an ambulance must be called immediately.'

Alternatively, the need for medical care may be generated by the request of the detained person him or herself. Paragraph 9.8 provides:

> 'If a detainee requests a clinical examination, an appropriate health care professional must be called as soon as practicable to assess the detainee's clinical needs. If a safe and appropriate care plan cannot be provided, the police surgeon's advice must be sought. The detainee may also be examined by a medical practitioner of their choice at their expense.'

As to the implementation of treatment of a detained person at the direction of a medical practitioner, again the custody officer has to take responsibility. Paragraph 9.9 sets out:

> 'If a detainee is required to take or apply any medication in compliance with clinical directions prescribed before their detention, the custody officer must consult the appropriate health care professional before the use of the medication. Subject to the restrictions in paragraph 9.10, the custody officer is responsible for the safekeeping of any medication and for making sure the detainee is given the opportunity to take or apply prescribed or approved medication. Any such consultation and its outcome shall be noted in the custody record.'

What is more, the custody officer is obliged to be pro-active in his enquiries about the proper medical treatment of the detained person and how it could affect other duties that the police have. Paragraph 9.13 states:

> 'Whenever the appropriate health care professional is called in accordance with this section to examine or treat a detainee, the custody officer shall ask for their opinion about:
>
> • any risks or problems which police need to take into account when making decisions about the detainee's continued detention;
> • when to carry out an interview if applicable; and
> • the need for safeguards.'

Paragraph 9.14 goes on:

> 'When clinical directions are given by the appropriate health care professional, whether orally or in writing, and the custody officer has any doubts or is in any way uncertain about any aspect of the directions, the custody officer shall ask for clarification. It is particularly important that directions concerning the frequency of visits are clear, precise and capable of being implemented.'

Again, there are provisions as to the documenting of these matters. But, vitally, the obligation is for the custody officer to seek clarity if there is any uncertainty, and to seek the guidance of the expert when it comes to how the medical condition could affect the officer's other functions.

The Notes for guidance are also significant. They provide, in particular, another reminder of the need for caution where one condition can mask another. Note 9C provides a particular example:

> 'A detainee who appears drunk or behaves abnormally may be suffering from illness, the effects of drugs or may have sustained injury, particularly a head injury which is not apparent. A detainee needing or dependent on certain drugs, including alcohol, may experience harmful effects within a short time of being deprived of their supply. In these circumstances, when there is any doubt, police should always act urgently to call an appropriate health care professional or an ambulance. Paragraph 9.5 does not apply to minor ailments or injuries which do not need attention. However, all such ailments or injuries must be recorded in the custody record and any doubt must be resolved in favour of calling the appropriate health care professional.'

Note the phrase '*any doubt must be resolved in favour of calling the appropriate health care professional.*' The obligation is not for the custody officer to call for assistance if he is satisfied that that such assistance is needed, but to summon help if he realises it might be. The Code seeks to bring in a 'better safe than sorry' approach. There may be criticism of whether such an approach is realistic, whether it would lead to unworkable standards. However, the words are there in black and white.

Specific guidance as to how to react to a detained person's particular medical condition is also provided by Annex H to the Code. Guidance note 9H sets out the purpose:

> 'The purpose of recording a person's responses when attempting to rouse them using the

> procedure in Annex H is to enable any change in the individual's consciousness level to be noted and clinical treatment arranged if appropriate.'

Annex H states:

> 'If any detainee fails to meet any of the following criteria, an appropriate healthcare professional or an ambulance must be called.'

Annex H then sets out the criteria:

> '*Rousability* – can they be woken?
> • Go into the cell
> • Call their name
> • Shake gently
>
> *Response to questions* – can they give appropriate answers to questions such as:
> • What's your name?
> • Where do you live?
> • Where do you think you are?
>
> *Response to commands* – can they respond appropriately to commands such as:
> • Open your eyes!
> • Lift one arm, now the other arm!
>
> Remember to take into account the possibility or presence of other illnesses, injury, or mental condition, a person who is drowsy and smells of alcohol may also have the following:
> • Diabetes
> • Epilepsy
> • Head injury
> • Drug intoxication or overdose
> • Stroke'

It is apparent, then, that the Code sets out in substantial detail, and a detail not spelt out in many other areas, the duties and standards expected of the custody officer in relation to the wellbeing of the detained person.

Constantly emphasised is the need to obtain **appropriate medical care** for a detained person who may need it. However, here a problem arises, both for the custody officer seeking to provide the appropriate care and the lawyer subsequently seeking to analyse whether the custody officer was fulfilling his duty: The Code on occasion provides prescriptive guidance on what treatment is appropriate, but such guidance is rare – for example in relation to the regularity of monitoring. Of course, once the custody officer has obtained the assistance of an appropriate healthcare professional, he or she should be suitably advised to make sure the appropriate care and treatment is provided. But what about the stage BEFORE medical advice is obtained? How does the custody

officer know whether he should call for an ambulance or just a Forensic Medical Examiner? This question is not always simple. Here, the Code does not provide the same assistance. Indeed, note 9A of the Notes for guidance states as follows:

> 'A 'health care professional' means a clinically qualified person working within the scope of practice as determined by their relevant professional body. Whether a health care professional is 'appropriate' depends on the circumstances of the duties they carry out at the time.'

In other words, the custody officer has, when presented with a detained person with some form of medical condition, to make a judgment as to how serious the condition is, and how to respond. In the case of a detained person like Michael Powell, in the Lozells area of Birmingham in September 2003, this can be a judgment upon which much depends.

Other Material Establishing Expected Standards

It is at this point that it is convenient to make clear that, of course, Code C of the Codes of Practice is not the ONLY material which sets standards expected of custody officers. For example, the training that the officer receives in relation to Code C will equally be important. After all, would it be fair to hold the individual officer to account on the basis of standards that his police service did not teach him? Code C has no use if it is not taught, understood and implemented.

But training in other areas will also be relevant, as can most clearly be seen by reference to the problem of the custody officer's own assessment of the medical condition of the person brought to his custody suite. In general, Code C does not provide the help he would like. However, he will have received a degree of First Aid training, likely to be to a higher level than required of other officers. That training may tell him that a person in a particular condition – for example unconsciousness – requires urgent medical assistance. It is likely also to have taught him how to administer CPR – in other words how to cope pending the arrival of an ambulance.

In this way one can see how it is not just Code C that dictates the standards required of the custody officer, but also the other areas of his training where they interact with the custody officer's specific responsibilities.

The Past and the Future

The progression that has been seen over the last 20 years and more in relation to the custody officer's duties as they relate to preventing deaths in custody is a progression towards a more regulated and prescriptive system, and one that focuses more and more on care for the wellbeing of the detained person and the avoidance of such catastrophic events as a death in custody.

The very introduction of the Police and Criminal Evidence Act 1984 and the Codes of Practice is testament to that fact. A statutory framework and a set of principles was required to regulate police conduct and protect public confidence.

More recently, the introduction of Annex H demonstrates in the clearest terms how prescriptive the Code is capable of being – particular tests are spelt out, and particular action is required of the custody officer if just one of the tests is not met.

Reference to Code C as it was 15 years ago confirms the point. Section 3 contains no reference to the risk assessment and the prescriptive way in which it has now to be carried out. Whilst section 9 deals, in often similar terms as the current Code, with the provision of medical treatment to those detained persons who need it, there is no provision for how regularly those persons should be monitored as in the current Code and Annex H, of course, does not appear.

It would be a bold man, therefore, who predicted that the future held a less prescriptive system of regulating the conduct of custody officers. The pressure on the government and the police to do all that can be done to avoid deaths in custody is as great as ever. The attraction of spelling out to custody officers, more and more, what action is required in specific circumstances, is very great. This may also grow as we learn more about what measures are best employed to avoid such deaths.

For some custody officers, I imagine this might seem like unwelcome intrusion upon matters where what is really required is common sense. However, for others, perhaps it would be welcome. Take the example of the initial assessment that the custody officer has to make of a detained person who clearly has a medical condition but the seriousness of that condition is rather more difficult to evaluate. Wouldn't the custody officer, who may have to answer in due course for the way in which he exercises his judgment, be assisted by a clearer checklist of considerations to inform him whether he should call immediately for an ambulance, or get the person into a cell for observations, or simply wait for an FME?

It may also be attractive to have clearer established procedures and standards in order to avoid the scenario in the Michelle Wood case – where nobody could be called to account due to the failure to establish what proper procedure was.

What is, in my view, plain, is that the role of the custody officer at the front line of preventing deaths in custody and answering for failures in those efforts will continue. It is a role that brings enormous responsibility, responsibility governed chiefly by Code C of the Codes of Practice as it evolves, and indeed grows, over time. As the Code develops, and the responsibilities of the custody officer develop with it, better strategies for avoiding deaths in custody can be put in place. But hand in hand with such improvements goes the potential for prosecution for failures to comply with them, as the standards expected are more and more clearly set out.

It is absolutely essential, therefore, that both custody officers and those who have responsibility for training and monitoring their conduct understand the significance of the position of custody officer in preventing deaths in custody, the importance of Code C and the imperative of ensuring that it provides the best tool it can for avoiding events that can be catastrophic for the lives of so many people.

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