

Case study

HM Inspectorate of Constabulary: Use of police custody for those with mental health issues

The police have powers under section 136 of the Mental Health Act 1983 to take individuals who are suffering in a public place from mental health issues to a 'place of safety' for their protection and in order that they can be medically assessed.

A joint inspection was carried out by HM Inspectorate of Constabulary, Her Majesty's Inspectorate of Prisons, the Care Quality Commission and the Healthcare Inspectorate Wales which examined the extent to which police custody is used as a place of safety. It also identified the factors which either enable or inhibit the use of other preferred settings as a place of safety, such as a hospital or other medical facility.

The inspection was informed by Article 3 of the ECHR, the right not to be subjected to torture or other serious ill treatment. In particular, it focused on a case brought against the UK by an individual, who had been held for some 75 hours in police custody under section 136: *MS v the United Kingdom*, (2012) 55 EHRR 23. In this case the European Court of Human Rights held that Article 3 had been breached. It found that the treatment was degrading, defined as being such to 'arouse feelings of fear, anguish and inferiority capable of humiliating or debasing the victim and possibly breaking their physical or moral resistance'.

This means that a person's human rights might be breached if they are held in police custody for a prolonged period where the police station is an unsuitable environment, even if the detention is in line with the Mental Health Act. This was one of the factors underpinning recommendations made in the inspection report, 'A Criminal Use of Police Cells: The Use of Police Custody as a Place of Safety for People with Mental Health Needs' published June 2013, aimed at reducing the use of police custody as a place of safety. The report stated that if inappropriate use of police custody as a place of safety did not reduce significantly by April 2016 the inspectorates will seek to implement a recommendation that the Mental Health Act be amended to remove a police station as a place of safety except in exceptional circumstances.