This paper argues for the substantial reduction of the ambit of police custody, and for the regulation of police conduct in custody blocks. Detention in custody is widely used by the police to apply pressure on suspects to make confessions. This is oppressive and wasteful. Custody should be used much more sparingly and only where detention is necessary for safety reasons. Custody can in any case be a dangerous place for detainees. An average of up to 23 people die in police custody every year, including four detainees from Black, Asian and Minority Ethnic Heritage, a greater proportion than their percentage of the population. Regulation of police conduct in custody blocks is supposed to be carried out by the little-known statutory Independent Custody Visiting Scheme. The scheme enables members of the public to make unannounced visits to police stations and to check and report on the welfare of detainees. As the result of government policy and the power of the police, the visiting scheme is neither independent nor effective, fails to challenge the police, makes no discernible impact on their behaviour or on the deaths in custody figures, provides no measure of police accountability, and obscures the need for urgent reform. This paper recommends immediate implementation of these reforms because they would save lives.

**Key words** defund • abolish • reform • regulation • police • custody

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**Introduction**

The concepts of justice, power and resistance lie at the heart of the conflicts in our society. Justice is a universally desired quality, and people who are detained in police custody have the same right to justice as anyone else, however much they are demonised or simply ignored by most people. The police have all the power in custody, and that power affects the behaviour of everyone else involved, even when it does not turn into the neglect and abuse of detainees. Mobile phone video recording of such abuse has given much more impact to the resistance to police power, and is being channelled into campaigns for justice, most significantly *Black
Strident calls to ‘defund’ or abolish the police followed in the wake of the police killing of George Floyd in Minneapolis in the United States on 25 May 2020. Campaigns focusing on the institutional racism of the police also resonate in England and Wales. Black men are 19 times more likely to be stopped than the general population (Guardian, 21 January 2021). And there are up to about 23 deaths in police custody every year in England and Wales, of whom about four are BAME (Black, Asian and Minority Ethnic Heritage) victims (INQUEST, 2023), some 20% of deaths as against 16% of the population (House of Commons Library, 2020). There should, of course, be no deaths in custody: and any death, from any ethnicity, is one too many. Furthermore, on average, one person a week commits suicide after being detained in police custody: the figures are not broken down to show ethnicity (IOPC, 2021–2022). There is little public or media concern about these deaths. By way of comparison, the suicide of just one person after appearing on the daytime television programme, the Jeremy Kyle Show, generated far, far more publicity, and caused the programme to be taken off the air (BBC News, 15 May 2019).

The research reported below started with an in-depth study of custody visiting. In carrying out this research I spent a great deal of time observing the work of custody blocks. This led me to the view that custody is used much too widely and unnecessarily. Both custody itself and custody visiting need radical reform. First, reform of custody would see the number of detainees substantially reduced. The use of custody should be restricted to circumstances where safety is at risk: custody should not be used, as it sometimes is, to pressurise suspects into making confessions. The second reform would be to the statutory Independent Custody Visiting Scheme. Custody visiting is supposed to be a regulator of police conduct in custody, and a deterrent to police misconduct which could lead to the death of detainees. As will be shown in this paper, the authorities have always kept the scheme as far away as possible from fulfilling these purposes (Home Office, 1986; Kendall, 2018: 40–45). The reforms to custody visiting which I propose are radical and would ensure that the scheme did fulfil these purposes. And they would also go a long way beyond piecemeal tweaks.

**Custody visiting**

Custody visiting originated in the early 1980s, with proposals from Michael Meacher MP (House of Commons, 1979–1980) adopted by Lord Scarman in his Brixton Report (Scarman, 1981). Mr Meacher's proposals were made in the context of a House of Commons Home Affairs Committee inquiry into deaths in custody. At that time there was much public concern about several high-profile cases. Mr Meacher proposed that random visits should be made by groups of visitors including a lawyer, and that visitors should investigate allegations by detainees that the police had assaulted them. Mr Meacher realised that more safeguards in custody were needed because custody is hidden from the public; that the number of injuries and deaths in police custody should be reduced; that random visiting would be a deterrent against police misconduct; that the police do not always tell the truth about what happens to detainees in custody; and that the police complaints system needed to be reformed. All these considerations are just as relevant today as they were in 1981.

Mr Meacher's proposals were not accepted by the Home Affairs Committee, but they were adopted by Lord Scarman. The context of the Scarman report was rioting in Brixton in 1981 which was provoked by the unfortunately named Metropolitan
Police operation Swamp 81, the widespread use of stop and search, and what was seen as heavy-handed racist policing. Scarman endorsed the Meacher proposals and recommended a statutory system of inspection and supervision of custody by people other than police officers. The Scarman report was debated in parliament, and the Labour opposition recommended that the report’s recommendations be adopted in full, but the Conservative government failed to adopt any of its recommendations, including those made for custody visiting. This tendency of governments to commission reports and then shelve them finds many echoes, most recently and egregiously, with the Angiolini report (Angiolini, 2017) into deaths in custody. Governments think there are no votes in these issues.

However, local pressure in Lambeth (the London borough including the Brixton area) forced the government to allow the establishment of a non-statutory visiting scheme from 1984, and the current statutory scheme was inaugurated in 2002. The Home Office are the key sponsors of custody visiting; they devised the original scheme, and they have maintained and updated it, with a great deal of recruiting from bodies supporting the police and none from bodies representing detainees. The Home Office and police input have ensured that the scheme causes the minimum amount of trouble to the police (Kendall, 2018: 45). The scheme is managed locally by Police and Crime Commissioners. Each Commissioner is elected locally for various purposes, including that of holding the police to account for the exercise of their duties. The Commissioners therefore perform the function of one of the regulators of the police, and they should be able to draw on the reports of their custody visitors in holding the police to account, but this does not appear to happen much.

The original promoters of custody visiting saw it as a means for regulating police conduct in custody blocks. Regulation is one way to provide resistance to the abuse of power. Regulation involves the setting of standards and monitoring whether those standards are met, with powers to highlight, and usually also to correct, any deviance from those standards. The purpose of regulation could be said, quite simply, to prevent harm to individuals and society. Regulators, as part of their job, have to decide whether, and if so how, to act in opposition to powerful parties. The police are a powerful institution, and police misconduct harms both detainees and society generally. The Independent Custody Visiting Scheme is the only system of outside scrutiny which could provide regulation of police conduct in custody blocks. Custody visiting is established as a regulator by forming part of the United Kingdom’s National Preventive Mechanism as required by the United Nations Instrument OPCAT.

Power

The power of the police is felt by every member of society: it radiates from the uniform and the institution. The police are a specialist body trained to use force where that is necessary: the latent threat of the use of force is thus always present in policing. The police do not have to do very much to get what they want: all kinds of people, including those who play parts in the subject matter of this paper, from Home Secretaries and civil servants to detainees in custody and custody visitors, react to this power by avoiding confrontations with the police and second-guessing what will be acceptable to them. This phenomenon of the weaker party doing what the stronger party is believed to want when no force has been exerted was studied, in a political context, by Steven Lukes (2005). Lukes’ theory is just as apt in cases where a
weaker regulator has to deal with a stronger regulatee. He explains how a dominant party can, in situations where there is no overt conflict, influence the weaker party without having to actually do anything, and that this result is achieved through the process of socialisation. The result is that the weaker party, the regulator, takes no action against the stronger party which it is supposed to be regulating.

The researcher should therefore watch out for what does not happen, what the weaker party does not do and does not say. The counterfactual is what, but for the exercise of the power in question, those subject to that power would have thought and done, in accordance with their ‘real’ interests. In the case of a weak regulator, it is not difficult to establish the relevant counterfactual: it is performing the regulatory function properly, which, presumably, is what a regulator would wish to do. The researcher examines the behaviour of the weaker party, compares that with what it should have done, and it becomes apparent that the failures of the weaker party are likely to have been caused by the imbalance of power, that is the effect of the dominant party on the behaviour of the weaker party. The technique of looking out for what does not happen, and seeking explanations in the power imbalance, was followed throughout this research (Kendall, 2020).

Research methods

The study of custody visiting involved reviewing the history of the national scheme and carrying out a local case study. A full account of this research has been published (Kendall, 2017; 2018; 2020), together with details of the methodology and sampling, and the justification for applying the findings to this nationwide scheme beyond the ambit of the local study. Because it is useful to understand the attitudes of Police and Crime Commissioners and of the police to research, the story of my approaches for access is set out here. The approaches show a mixed picture of openness and what the police call ‘transparency’, with elements of obstruction and indifference. First, a senior academic met the relevant Police and Crime Commissioner and obtained his permission to conduct this study. His staff officer, the scheme administrator, kindly facilitated the practical arrangements, including encouraging visitors to allow themselves to be observed at work and providing me with a large number of visitor reports. The police in the area studied were always helpful, and one of them actually made a crucial intervention enabling me to interview detainees. That officer’s solution answered police objections, overcame the ethical problems and provided a conducive setting for the interviews. Interviewing the detainees was a very significant element in the research.

The relative ease of access and openness to research shown by the police in the area chosen for my study was to some extent a surprise. Access was not obtained elsewhere, and that may be because I made the approaches rather than the senior academic who had obtained permission for the study in the chosen area. The Police and Crime Commissioner for another area delegated the task of replying to my request for access to a senior police officer. My view is that policy about research should form part of the Commissioner’s duties and should not be left to the police to decide. I was invited to a meeting with the senior officer from that force. He effectively blocked my access by seeking to impose a condition which I could not possibly fulfil. That condition was that I conduct an evaluation of the custody work of his force, a very substantial task, and one which was quite outside my remit and capacity. The Commissioner in another area simply never answered my letter. I was also obstructed by Commissioners...
in the guise of another gatekeeper, the Independent Custody Visiting Association (ICVA). Their membership is entirely composed of Commissioners. They refused to let me attend one of the annual meetings of their custody visitor managers.

**Detention in police custody**

Police work in custody blocks is, arguably, the most important component of the criminal justice system: in many cases, it determines the final result of the criminal process. Arrests can be made for a very wide range of alleged offences, and many people are detained just to put pressure on them to confess. This results in custody being used much more widely than is necessary for public safety. The setting of the custody block maximises the power imbalance between suspects and the police. The presumption of innocence does not apply until after charge. The police themselves say that the ‘primary purpose of taking an individual into police custody is to make them amenable [emphasis added] to the investigation of a criminal offence of which they are suspected’ (National Police Chiefs Council, 2022). The experience of detention is a context conducive to breaking the will of the suspect and persuading them to cooperate and to make a confession. A plea of guilty, based on a confession which can stand without being corroborated, bypasses a courtroom battle and gives the police everything they need to secure a conviction. The ethos of the custody block is, in Herbert Packer’s very illuminating analysis of ideological attitudes to criminal justice, that of ‘crime control’, which is far removed from the ‘due process’ requirements found at the other end of the spectrum (Packer, 1968). Custody visiting seems to let in the possibility of elements of due process into this crime-control setting, but this, as will be shown, is more apparent than real.

Custody blocks are the places where the police process the hundreds of thousands of people who are arrested each year. The police have wide discretion in how they operate in custody blocks (Welsh et al, 2021: 131–54), and what they do there is largely invisible to the outside world (Maguire, 2002: 75). Police custody is one of the state’s secret places, largely unknown to the general public. The police exercise very significant power in these hidden places, without scrutiny. To try to understand what can happen in these secret places, it is worth looking at Zimbardo’s Stanford prison experiment (Haney et al, 1973), and at how bad it can actually get in real detention facilities like the notorious Abu Ghraib prison in Iraq (Gourevitch and Morris, 2008). The appalling contempt shown for prisoners at Abu Ghraib, captured on film, is mirrored, albeit on a much smaller scale, in the contempt shown to a detainee in a police station in Birmingham and reported at the inquest into the detainee’s death (BBC, 2014). CCTV footage showed the officers laughing at the pitiful state of a detainee they themselves were viewing on CCTV, when they should have been looking after him and attending to his urgent needs: the detainee died soon afterwards.

Research, notably that done by Kemp (2010; 2012; 2013; 2014) and Skinns (2011), shows that all is not well in custody, and that there are significant evasions and breaches of detainee safeguards, such as the right to see a legal adviser and to be detained only for as long as is necessary. Detainees may be kept in custody for at least 36 hours. One of the police officers interviewed for this research described custody as a “very locked-down environment, the police’s world, which nobody else except custody visitors gets a look into”. For those detained in these hidden places, this very locked-down environment, custody is disorienting, lonely and potentially dangerous.
Detainees run the risk of being abused by the police, whatever the extent of any actual abuse: and, as noted above, on average up to some 20 detainees, of whom a disproportionate number, four, are from Black or ethnic minority heritage (BAME), lose their lives in police custody every year (INQUEST, 2023): and only one police officer has been successfully prosecuted for any of the deaths since 1971 (Fullfact, 2020; Guardian, 29 June 2021). Fewer than one in ten British police officers who have been found to have potentially committed gross misconduct by the Independent Office for Police Conduct are dismissed (Guardian, 18 January 2021). These stark statistics show that the culture of prosecutors and juries matches that of the police in being very opposed to holding the police accountable for abuse of detainees and deaths in custody. Government has no interest in this, as is shown by their policy on inquests: it is scandalous that they have failed to implement any of the recommendations of the Angiolini Report (Angiolini, 2017): as that report points out, most of those recommendations had in any case been made in earlier reports and had, similarly, been ignored by government. The Report noted ‘the evidence of disproportionate deaths of BAME people in restraint related deaths. Any death involving a BAME victim who died following the use of force has the capacity to provoke community disquiet leading to a lack of public confidence and trust in the justice system. This can be exacerbated if people are not seen to be held to account, or if the misconduct process is opaque’. Quite so: no one is held to account, and the process is opaque. The same general point about the absence of police accountability is made on page 15 of the Casey Report (Baroness Casey Review, 2023).

One of the Black detainees who lost his life because of restraint applied by the police was Sean Rigg, who died at Brixton Police Station on 21 August 2008. He had initially been handcuffed and restrained in a prone position with police officers leaning on him for eight minutes. He was then placed face-down with his legs bent behind him in the caged rear section of a police van and transported to Brixton police station. During the journey ‘his mental and physical health deteriorated’ and he was ‘extremely unwell and not fully conscious’ when eventually taken out of the van. This followed a delay of ten minutes during which he was left handcuffed, unattended and unmonitored while the van sat outside the station in the car parking area. Two officers then carried Mr Rigg to the caged area (known as the ‘Cage’) at the entrance to the station’s custody suite where he was left placed on the floor ‘handcuffed and unresponsive’. Some 35 minutes later it was found that his heart had stopped and that he was not breathing (Guardian, 21 August 2009; Independent, 27 June 2012; IPCC, 2014). It appears that no custody visitors were at the police station while this was going on. Had they been there, under the current rules it is unlikely they could have made a difference, because the car park and the Cage are not parts of the custody block that they inspect. One of my proposed reforms is that they should inspect those areas.

However, the police commander did call in a senior custody visitor to the police station later that evening, some hours after Mr Rigg had died. The commander asked the visitor to agree that great efforts had been made to save Mr Rigg. The visitor was unable to give the police that confirmation, as she had not been present at the time, and all she had seen was resuscitation equipment out of its packaging. Despite that, the police report of the incident stated that the visitor ‘asserted that she was content with what she had seen’. Having interviewed the visitor myself, I have no hesitation in believing that she did not make that ‘assertion’. The report was therefore thoroughly misleading. The natural inference is that the police called the visitor in, and maybe
Reform of police custody

also invented the remarks, in order to put a self-serving spin on the evening’s events, and to reduce criticism of the police about the death (Kendall, 2018: 124–6). Custody visitors are supposed to safeguard detainees: here the visitors’ role is to safeguard the police by helping them in constructing their defence.

Custody blocks, as total institutions, are places where the power of the state, through its agents, the police, takes centre stage. Those who are arrested and taken to a custody block are on police ‘territory’ and, for the most part, under the complete control of the police (Choongh, 1997: 81). The concept of power, and the use of that emotive word, both play a central role in defining the relationship between police and detainees. Fielding (1988: 174) found that constables derived great satisfaction from ‘being the power’. The power imbalance within police custody is exacerbated by the vulnerability of many, if not all, detainees. Some detainees, such as juveniles, are officially designated as vulnerable, but in the view of an experienced defence practitioner, ‘all [detainees], in the atmosphere of a police station, are vulnerable, and many are frightened and unsure’ (Edwards, 2008: 243). The evidence gathered in this research supports the view that all detainees are vulnerable. For instance, a defence lawyer interviewed for this research said some clients found being detained in police custody “fairly horrendous, very traumatic”. One of the visitors described the impact of custody on detainees as “huge: you can see six-foot-six men crying in the corner: it’s a massive effect” (Kendall, 2018: 24). Research by Skinns has shown how detainees are subject to pain similar to that experienced by prisoners, without the socialisation with other inmates (Skinns and Wooff, 2020). That pain is a form of punishment which is inflicted upon detainees when they are still suspects and have not been charged with any offence, let alone found guilty. Skinns shows the importance of treating detainees with dignity (Skinns et al, 2020).

Skinns has shown that doctors, lawyers and drug workers working in custody blocks are subject to police dominance of the custody blocks as police territory. Skinns mentions that some of her research participants told her that doctors colluded with the police in their assessment of the fitness of suspects (Skinns, 2011: 189). My research showed that the visitors were another group who were dominated by the police. But visitors are supposed to be regulating the police. The most substantial element of regulation of police custody is self-regulation by the police via the completion of computerised custody records, which are occasionally falsified by the police (Sanders, 2008). Apart from that, each custody block is inspected just once every six years by Joint Inspection Teams from HMICFRS (His Majesty’s Inspectorate of Constabulary Fire and Rescue Services) and HMIP (His Majesty’s Inspectorate of Prisons). Visitors attend on average once a week, and are the only outsiders to see detainees in their cells. As regulators they have a vital role to play, if only they could be empowered to do so.

Custody visitors and the police

The research carried out for this project found that the Independent Custody Visiting Scheme was, despite its branding, not independent, and that it was also largely ineffective. It lacked independence for a number of reasons. The visitors were recruited, selected, trained and deployed by the Police and Crime Commissioner, who could dismiss them summarily. The visitors had no public voice: their reports were not published except in very bland summaries on the Commissioner’s website. The training provided by the Commissioner was heavily police-oriented and did not
enable the visitors to understand the context in which they would be working. The trainer discouraged visitors from challenging the police. At no time did the trainer give the visitors to understand that they were acting as regulators, and described them as fulfilling quite a different role, as members of a team working with the police. Visitors tended to identify with the police; they did not have an understanding of the criminal justice system or the role of defence lawyers; they did not realise that about half of all detainees are released from custody with no further action; and they did not see any connection between their work and the deterrence of police misconduct that could lead to deaths in custody.

The failure of the visiting to be effective could be seen clearly in the way it was organised. Visits were supposed to be random and unannounced, but they tended to take place at the same times on weekdays, rarely at weekends, and never at night, so the police knew when to expect visits. Central to every visit to a police station were the visitors’ meetings with the detainees in their cells. These meetings should have given the visitors insight into matters of concern raised by the detainees. But this could not happen, because the meetings were supervised by the custody staff. Custody visiting can be effective only if the detainees can speak to the visitors in confidence. But the custody staff member can overhear everything that is being said and can keep a watchful eye on the meeting. The code of practice actually says that the meeting must take place within the sight, but not out of the hearing, of a custody staff member (Home Office, 2013). The geography of most custody blocks makes this stipulation well-nigh impossible to comply with, so the custody staff usually overhear the conversations. As a result, the chances of the detainee having a confidential chat with the visitors are nil. The visitors’ meetings with detainees were in any case very brief, lasting only two or three minutes, and many detainees did not understand what the meetings were for. The ostensible reason for the custody staff member staying close to the cell is safety. But the detainees are all risk assessed and the custody visitors keep within reach of the cell door. There was only one visitor who commented on this. She said that the proximity of the staff member destroyed the confidentiality of the visitors’ relationship with the detainees, and with it ‘the whole purpose of custody visiting’ (Kendall, 2018: 98–108).

During the research, detainees were interviewed about these visits, with no time restraints, and conducted privately in a much less cramped meeting room with a table and chairs. Some of the detainees said that they were unable to voice criticism of the staff when one of the staff was listening: “I wanted to tell the visitors I was annoyed because I had asked the guards questions two hours ago and had got no answers, but I couldn’t tell the visitors because the guards were standing there”. With the ‘guards’, the custody staff members, listening in, the detainee would fear reprisals after the visitors had left. One detainee said: “I wouldn’t trust them [the visitors] because I had only just met them”. Hardly surprising: no one trusts people they have just met, and detainees have every reason to be suspicious of people the police introduce them to. One detainee said: “The only reason I talk to the visitors is because I’m here, you know; I’m a captive audience”. ‘Captive’ is a good description of an audience which is both detained in custody and suddenly confronted by a visitation in a small cell. A custody cell is quite a cramped space in which to hold a meeting, with no table and no chairs (Kendall, 2018: 102).

I therefore found that the visitors’ meetings with the detainees were almost wholly ineffective. Other components of the visits were also ineffective. These included:
visits not being unexpected by the police; delays in the visitors being admitted to the custody block; failure to enquire why some detainees had been taken to hospital or why other seriously ill detainees had not been taken to hospital; failure to enquire why access to some detainees was denied; visitors having to have their reports checked by the custody sergeant; and visitors failing to report back on the outcomes of enquiries the detainees had asked them to make on their behalf. Visitors did not see themselves as independent regulators upholding the welfare and the rights of fellow citizens. For instance, some visitors did not leave it to the custody staff to shut the cell door at the end of a visit to a detainee and took it upon themselves to shut the cell door, which is a quintessentially custodial act and not the role of a regulator. Visitors tended to assume that the detainees must have done something to be held in custody and were, therefore, guilty. One visitor was asked to comment on whether he felt neutral. Without any sense of irony, he expressed the concept in these terms: “If I can help the police I will, if I can help the criminal I will”. For him, innocent detainees did not exist (Kendall, 2018: Chapter 3).

The research noted many significant silences on the part of the visitors. For example, visitors never asked whether an appropriate adult had been appointed to assist a vulnerable detainee, and if not, why not. They never asked why a detainee was not receiving legal advice. These trends were also observed at the meetings that were held between the police and the visitors at the police stations they visited. The meetings were not a forum for debate. The police used the meetings to get messages over to the visitors, and some of the visitors seemed to know that the police did not want to listen to what they, the visitors, had to say about custody. All these behaviours showed how the visitors were unwilling to challenge the police, or, in some cases, that it did not even occur to them to do so: and that they were subject to the power of the police, with the dynamics of that power neutering their ability to perform their function of regulation (Kendall, 2018; 2020).

What did the police and custody staff think of the visitors? The party line was of course supportive. But one custody sergeant said in interview that the visitors did not know enough about the work of custody to assess their performance. Another sergeant saw the role of visitors as little more than passing on orders for hot drinks from the detainees to the custody staff. Both comments show that these police officers did not respect the visitors or see them as likely to have any influence on their own behaviour (Kendall, 2018: 97).

Visitors and deaths in custody

The intention of the original proponents of custody visiting was that it should deter police from conduct which might lead to deaths in custody, and that is what its purpose should be today. The research looked out for practice, training and statements to this effect, but there was a deafening silence. There was nothing about it in the official literature, and the issue played no part in the training or the practice of the scheme in the case-study area. It is therefore not surprising that visitors did not see prevention of deaths in custody as a purpose of the scheme. Only one of the visitors thought there was any problem with the way the authorities handled deaths in custody. At a review meeting before an inquest into a death at a police station visited by a group of visitors, the police asked the visitors to promote the line that the death had not
been the fault of the police: a police practice noted in other contexts by Pemberton (2008). The inquest found that the police bore some responsibility for the death, and the coroner was critical of the police. However, at the next review meeting with the police, some three months later, the inquest was not even on the agenda, and no visitor raised the point. All this is the exact opposite of what should happen (BBC News, 24 November 2014; Kendall, 2018: 82–87).

The Independent Custody Visiting Association

The research looked for effective guidance enabling the scheme to fulfil the purpose of safeguarding detainees, and for a national organisation giving a voice to visitors. One might expect these roles to have been played by the Independent Custody Visiting Association (ICVA). However, no visitors are members of ICVA, so they have no voice. ICVA has sought to improve the conditions of detention for female detainees, which is a very welcome initiative (https://icva.org.uk/sanitary-custody). But ICVA does not appear to seek to improve the experience of custody from the broader perspective of regulating police behaviour.

The Home Office

The research found that the Home Office, whose responsibility it has always been, has failed to design, set up and maintain a scheme directed to the fulfilment of the regulatory purpose of safeguarding detainees. The first Home Office Circular on custody visiting specifically prohibited visitors from assisting detainees with complaints, as have all subsequent circulars and codes of practice (Kendall, 2018: 40–45). There was then, and remains to this day, a complete absence of words that one would expect to find in government publications about custody visiting as a regulator, for instance ‘regulator’, ‘unannounced’ and ‘unexpected’ (see, for instance, Home Office, 2013).

In the year 2000 the Home Office organised a working party to draft a statutory scheme of custody visiting. The working party was dominated by the police, with no representation of the interests of detainees. Either it did not cross the Home Office’s mind that those interests should be represented, or the Home Office deliberately excluded them (Kendall, 2018: 48–51). The visiting scheme designed and maintained by the Home Office is a system which causes least trouble to the police. The design and maintenance of the scheme have been dominated by the institution which the scheme was intended to regulate, which is why it has failed to be independent and effective. The Home Office’s input has been greatly affected by the police, first, because the police were just about the only agency they consulted about the scheme, and second, because of the power of the police.

Another of the Home Office’s many responsibilities, the National Preventive Mechanism, a regulatory body under the UN OPCAT instrument, lays down standards for the work of custody visiting. The value of custody visiting depends on two qualities rightly seen as central by OPCAT, namely independence and effectiveness. In my view the Independent Custody Visiting Scheme does not meet those standards, although an inspection by the UN did not make that criticism in the very brief section of its report dealing with custody visiting (United Nations, 2019).
Coronavirus effects

Since this research was carried out, the coronavirus pandemic had a profound effect on all aspects of the criminal justice system, including the custody visiting scheme. In some cases, custody visitors stopped making actual visits to the police stations and instead made virtual visits by the means of telephone calls and zoom meetings. The police were naturally in control of these arrangements, and there was, therefore, even less chance of a detainee being able to convey to the visitors any concerns in confidence. Other custody blocks made the necessary arrangements for social distancing, PPE and face masks (ICVA, 2020). Custody visitors should be on the spot. They should use advances in technology not to enable them to keep away from the custody blocks but to improve their monitoring of what is happening when they are there, by making video and audio recordings of their visits. Those recordings would assist the visitors in providing evidence of what they had seen and heard in the custody block.

Reform of custody visiting

My research showed that the Independent Custody Visiting Scheme is neither independent nor effective, and that it makes virtually no impact on police behaviour or on the incidence of deaths in custody (Kendall, 2018: Chapters 3 and 4). Another positively damaging effect of the visiting scheme is that its very existence obscures the need for more effective regulation of police custody. The police can point to the work of the ‘independent’ scheme, as some officers did in my hearing, and argue that there is no need for more regulation of custody, and that there cannot be problems with custody because, if there were problems, they would be uncovered by the custody visitors. My research reveals the reality of the weakness of the scheme and demolishes the argument put forward by the police. If politicians, journalists and other opinion formers were to become aware of this weakness, the arguments against greater regulation of the police would fail.

My principal proposals for reform of the Independent Custody Visiting Scheme are as follows. The scheme would be run by a much more independent agency than either the ICVA or Police and Crime Commissioners. The ethos of that new agency would be to safeguard the welfare of detainees, and to substitute the visitors’ role of acquiescent bystander to that of effective regulator. Visitors would have to be trained by professional experts in the criminal justice system. The basic principle of unannounced visiting would be preserved and made to work properly so as to deter police misconduct which might lead to the death of detainees. Visitors would be encouraged to challenge the police. They would work with defence solicitors to safeguard the welfare of detainees and in pursuing complaints against the police. They would have strong statutory powers to ensure their regulation work was effective, which would ensure immediate admission to every part of the custody facilities and full publicity of their findings.

The scope of the work carried out by custody visitors would be extended to cover all aspects of custody. This would provide valuable insights and contribute to open, democratic discussions about custody. These discussions should cover the widest possible range of policy issues, including the frequency with which custody is used, the conditions under which custody is used, and the purpose for which custody is
used. One issue should be the use of custody as facilitating investigation by putting pressure on suspects. Custody should be used for greatly reduced numbers of suspects. Consideration should be given to what sort of alleged offenders should be detained in custody and, for those individuals for whom custody is necessary, how to ensure that it lasts no longer than it needs to.

**Conclusion**

My observation of custody leads me to argue for its use to be substantially reduced, and to prevent the police from detaining people when there is no safety issue and suspects are being pressurised to make confessions. Reducing the number of detainees in custody should also reduce the number of deaths in custody. Custody policy should be publicly debated. Similarly, the public needs to know about the Independent Custody Visiting Scheme. But, as hardly anyone has heard of custody visiting, the essential political step would be to make its nature and inadequacies known. When people know the facts, they would see the need to apply the reforms, because they would be transformative and they would save the lives of some of the detainees in police custody. Beyond the criminal justice system, this story provides telling insights about society generally, and should, in the words of Sir Stephen Sedley, “alert everyone concerned with the tension between authority and liberty”.\(^7\)

**Notes**

1. Set up (for England and Wales) on a voluntary basis in 1984–86, and on a statutory basis by the Police Reform Act 2002, s 51. I have researched the scheme as it operates in England and Wales; there are similar schemes in Scotland and Northern Ireland. The research has been published in Kendall (2018).
4. ECHR Art 6(2).
5. The Channel 4 series *24 Hours in Police Custody* is all about investigation, not the conditions of detention.

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References


