Case 4	Issue 34 – Mental Health	LEARNING THE LESSONS
Published February 2019		
For archived issues, learning reports and related background documents visit www.policeconduct.gov.uk/learning-the-lessons		
✉ learning@policeconduct.gov.uk	💻 www.policeconduct.gov.uk/learning-the-lessons	

Failure to get medical treatment for a man with learning difficulties

Use of force and arrest of a man with autism and ADHD, raising issues about:

- *Knowledge of PACE Code C*
- *Detainee care in accordance with College of Policing APP*
- *Defining mental vulnerability*

This case is relevant if you work in:

Custody and detention 	**Mental health** 

Overview of incident

One evening, at around 7.30pm, Mr A went to a pub. Mr B said that he worked at the pub and knew Mr A. He said that as the night went on, Mr A became drunk. Mr B said that Mr A was engaged in conversation with two girls and that he was becoming more and more aggressive towards them. Mr B said that due to Mr A's behaviour, he eventually asked him to leave the pub and Mr A eventually did. Mr B said that within seconds of Mr A leaving the pub, he heard a window smash in the lounge in the pub.

Mr A made a number of phone calls to the police. In the first he asked if anyone had reported a smashed window at the pub. In the second he stated that "his mate" was going to petrol bomb the local police station and that some of his other friends were going to "brick" the police station.

During the first call, Mr A said that someone else was responsible for breaking the window at the pub. During the second call, Mr A said that he had a shotgun on him. He asked for officers to be sent to him and that he was going to shoot them.

In a third call to the police at approximately 11.45pm, Mr A admitted to breaking the window at the pub. The call taker advised him to walk to the police station and use the external telephone outside the station.

PC C was on duty at the police station and said that she heard the sound of loud banging coming from the front area of the police station. She said that she decided to check what the sound was. She saw a man banging on the front door of the station. She did not know this man was Mr A at this point. She told the IOPC that she had been told by the control room about a "hoax" call by someone suggesting their friends were going to "brick" the police station. PC C said that the man was shouting, abusive and "clearly extremely intoxicated and drunk." When PC C looked out of one of the windows to check if anyone else was with the man, she saw the

man walking away from the station. At around 12am she requested help to search for the man. PC C also asked the control room whether this man had previously been arrested as he was shouting something about previously being sprayed. The control room operator said that he had not previously been arrested but that he did have warning markers for violence, and that he had ADHD and autism. PC C did not acknowledge the comment about the man having ADHD and autism in her response, just saying that he was clearly very drunk and she was unsure where he had gone. PC C confirmed to the IOPC as part of the investigation that she was unaware that the man was Mr A at this point, or that he had ADHD and autism. Autism is a mental disorder for the purposes of the *Mental Health Act (1983)*.

A few minutes after this conversation, PC D arrived at the station to pick up PC C so that they could go and look for the man in PC D's vehicle. PC C and PC D found the man at around 12.10am. PC C said that the man had his phone in his hand and appeared to be talking on it. Mr A's father, Mr E, said that he did not hear from Mr A until around midnight. He heard him say "the police are after me" and "my dad's on the phone, would you like to talk to him?" Mr E said Mr A sounded calm and polite during this call and that the phone call ended soon after. PC C said that when she and PC D arrived the man was on the phone and said "the fucking cops are here now." PC D took hold of Mr A's arm and told him that he was under arrest on suspicion of making malicious 999 calls and threatening to commit criminal damage. PC D said that the man responded to this by saying "Whoa, get off me, I'll get into the car, I just want a lift home."

PC D decided to handcuff Mr A due to the threats he had made. They were still unaware of his identity at this stage. PC D said that as soon as the handcuffs were applied by PC C, Mr A's demeanour changed and he became "violent and abusive" and tried to pull his arms away. PC D said that he had to use force to restrain Mr A to handcuff him to the rear. Once Mr A was handcuffed, PC D asked him to get into the back of the police vehicle. PC D said that Mr A threw himself into the vehicle and lay face down in the back seat. Mr A said that he hit his eye at the top of the door frame as the officer put him into the vehicle. Once Mr A was in the vehicle, PC D said that he told Mr A to turn around but he refused. PC C said that Mr A had to be pushed into the back of the car on his front and that PC D had to get into the back of the car to restrain him. PC D said that he tried to turn Mr A onto his back and get him to sit down. However, as he tried this, Mr A kicked him in his face and upper body. PC D said that he then lunged forward and tried to put his bodyweight against Mr A, but Mr A continued to kick out.

PC D said that he then used a compliance strike on Mr A 's head as this was the only area that was visible and within reach. PC D said that he first struck him with a moderate blow but Mr A continued to kick out. PC D then used a further compliance strike on Mr A slightly harder two more times until Mr A stopped kicking and became less violent. PC D then restrained Mr A's legs using a leg lock and asked PC C to request a van.

PC D completed a use of force form later that morning. He said that he had used force to protect himself and others. He said that tactical communication, primary control skills and handcuffing Mr A had not been effective but that an empty-handed defensive tactic had been effective. He also noted that he had punched Mr A three times to the head and that he would have used a taser instead had one been available.

After PC D applied the leg lock to Mr A, PC C was updated by the force control room that Mr A could not be arrested for abuse of 999 as he had called the 101 number. PC C gave this message to PC D. PC C and PC D de-arrested Mr A and re-arrested him for drunk and disorderly and assaulting a police officer. PC D continued to restrain Mr A while they waited for the police van to arrive.

National Autistic Society: A guide for police officers and staff

Do's and Don'ts when making an arrest

Do

- Keep physical contact to a minimum, avoiding use of handcuffs or other restraints, if possible.
- Check whether the person carries any information about their needs, read it and follow it.
- Explain simply and calmly where you are taking the person and why. Tell them what they should expect on arrival to the custody suite.
- Call ahead to warn the custody staff if the person appears to be distressed. Ask if arrangements can be made to avoid having to wait in a busy reception area.
- Tell the custody sergeant that the detainee is autistic and explain any related concerns.
- Deliver the caution slowly and clearly.

Don't

- Rush into making an arrest unless it is the only option.
- Raise your voice or rush the person, unless absolutely necessary.
- Use sirens and flashing lights, if you can avoid them.
- Detain or transport an autistic person unaccompanied in the back of a police van. They could become distressed and require your immediate attention or first aid.
- Attempt to stop the person from rocking or making other repetitive movements – these are self-calming mechanisms and likely to be beyond their control.
- Remove the 'comfort' items, such as pieces of string or other small items, unless essential. This may raise anxiety.

Find out more online:
https://www.autism.org.uk/products/core-nas-publications/autism-a-guide-for-criminal-justice-professionals.aspx

Once they arrived at the custody suite, PC C said that officers took Mr A out of the van and restrained him on the ground. PC C went to press the buzzer at the front of the custody suite. As she did so, she turned to check the officers were ok. She said that she heard Mr A make a noise in his throat as if he was getting phlegm up, and then she saw him turn his head and spit in the direction of PC D. Mr A said that when they arrived at the car park he told PC C that he would calm down if she kept PC D away from him. He said that when the male officer approached him he "kicked off" with PC C, calling her a liar and spitting at PC D.

Mr A was booked into custody by Ms F, a senior custody detention officer (CDO).

Mr A's custody record has an entry by Ms F which says that Mr A "deliberately kicked PC D in the face." However, this entry does not refer to PC D having used force on Mr A. Ms F did not record any visible injuries on the custody record and said that she could not recall any officers reporting any injuries to her. If they had, she would have added them into the initial care plan for Mr A.

PC C did not tell anyone in custody that Mr A had warning markers for ADHD and autism because she did not recall hearing the warning markers from the control room operator earlier. She said that at the time he was arrested Mr A refused to co-operate and was volatile. She said

that she only became aware of Mr A's identity when a custody officer linked the mobile phone number that the original calls came in from.

Ms F completed an initial risk assessment and a PNC search for Mr A at around 12.55am. Ms F said that she could not complete most of the questions on the risk assessment because Mr A refused to answer. At around 1am Ms F viewed various PNC screens for Mr A which enabled her to view warning markers showing "violent, ailment and self-harm". The PNC also showed that Mr A had autism and ADHD and that he had a history of self-harm when left alone.

Mr A was taken straight to a cell after being booked in at the custody desk. This was at around 1.10am. Shortly after this, Ms F created a new warning marker on the custody system which stated "from PNC diagnosed with ADHD and autism 2006." Sergeant I wrote in his review that Mr A had warning markers for self-harm when left alone and that he was still being violent in the cell. He was assessed as 'high' risk and placed on level two observations. This meant that he had to be checked every 30 minutes. Sergeant I said that he was unable to conduct an informed risk assessment with Mr A because he was behaving violently and refusing to engage with him during the booking in process.

Ms F said that a health care professional (HCP) was not requested as Mr A presented as volatile and aggressive and there was no sign that he had taken anything other than alcohol. Sergeant I told the IOPC that it is the responsibility of the CDOs, in this case Ms F, to flag any warnings to the sergeant should they be relevant to the care plan. However, he said that even if he had been aware of the warning markers it would not have resulted in him calling a HCP. At around 1.20am Sergeant I checked the custody computer system which had Mr A's warning markers for ADHD and autism on it.

***Police and Criminal Evidence Act (1984)*: Code C states:**

"'vulnerable' applies to any person who, because of a mental health condition or mental disorder:

(i) may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with:

- Their arrest and detention; or (as the case may be)
- Their voluntary attendance at a police station or their presence elsewhere (see paragraph 3.21), for the purpose of voluntary interview; and
- The exercise of their rights and entitlements.

(ii)does not appear to understand the significance of what they are told, of questions they are asked or of their replies.

(iii) appears to be particularly prone to:

- Becoming confused and unclear about their position;
- Providing unreliable, misleading or incriminating information without knowing or wishing to do so;
- Accepting or acting on suggestions from others without consciously knowing or wishing to do so; or
- Readily agreeing to suggestions or proposals without any protest or question."

and

Clinical treatment and attention, paragraph 9.5 states that:

"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."

Find out more online:
https://www.gov.uk/government/publications/pace-code-c-2018

At around 2am, Mr A was roused during a cell check and said that he had bitten himself. He would not show the custody officer where he had bitten himself. This custody officer told Sergeant I. At around 2.10am Sergeant I noted on the custody record that Mr A was monitored on CCTV and that there was no evidence he had self-harmed by biting. He also noted that Mr A had been lying on his back kicking the cell door continuously since being placed in the cell door and had unsuccessfully attempted to block the camera with his mattress.

Ms F visited Mr A at around 2.30am. She said she lowered the cell hatch and spoke to him. She said Mr A requested to speak to the sergeant and asked for a phone call. She said Mr A also mentioned that he had epilepsy, autism and diabetes. Ms F added an entry to the custody record detailing this request but said that she was unsure if these medical conditions were true. She explained that the reason that she added this to the custody record was because Mr A was constantly banging and shouting and he came across as though he was relaying whatever ailment he could think of as a distraction.

The custody record showed that Mr A asked to speak to the custody sergeant again at around 4.05am. Rousals continued every 30 minutes.

At around 5.25am Inspector G conducted a review and wrote on the custody record that Mr A was asleep and had not been roused as he was "sleeping off effects of alcohol". He also noted that the risk assessment had been revisited and that there were no issues other than those already recorded. Inspector G told the IOPC that he was not aware of the entry on the custody record which contained Mr A's claim that he had epilepsy, autism and diabetes. He stated that if he had been aware of this he would have reassessed the risk assessment and care plan. Inspector G was present in the custody suite during this incident, but did not see Mr A in person.

Around five minutes later, Sergeant I reviewed Mr A's care plan. He made no reference to the information added to the custody record by Ms F regarding epilepsy, diabetes or autism. He later told the IOPC that he was unaware of this entry at the time. This suggests that Sergeant I did not check the custody record between 2.30am and 5.30am. Sergeant I lowered the observation level to one, with 30 minute checks. Sergeant I's rationale for this was that Mr A was now asleep and would benefit from a period of undisturbed rest.

College of Policing Authorised Professional Practice (APP): Detainee Care states:

"The custody officer is responsible for managing the supervision and level of observation of each detainee and should keep a written record in the custody record. They should specifically check that officers and staff are adhering to the timing of levels of observation and carrying out rousing."

It was the opinion of the IOPC investigator that, in order to meet the requirements of this APP, a custody sergeant would be required to thoroughly read the entries made on the custody record by the custody staff.

Find out more online:
https://www.app.college.police.uk/app-content/detention-and-custody-2/detainee-care/

At around 6.20am Sergeant I entered onto the custody record that he had been made aware that Mr A wanted to speak to him. He said that it was not appropriate due to other issues in custody and that the man was now asleep.

At around 7.10am Sergeant I completed a handover to Sergeant J. Sergeant J accepted responsibility for Mr A during the handover process and reviewed the risk assessment and care plan. Based on the information in the custody record Sergeant J contacted Mr A's parents and was told by them that he had autism. Based on this information Sergeant J arranged for a HCP to attend. It was also noted on the custody record that Mr A had a black eye.

The custody record showed that Mr A was seen by a HCP between 9.30am and 9.50am. He was offered pain relief for discomfort to the left side of his face but refused this.

Following this incident, Mr A's mother made a complaint about the way her son was looked after in custody and injuries sustained during his arrest. The force Professional Standards Department (PSD) initially decided a local investigation into this matter was appropriate as the complaint did not meet the IOPC's mandatory referral criteria. However, the force PSD decided that no initial investigative steps could be taken due to the fact the case was sub-judice (where restrictions are placed upon public discussion of an incident subject to legal proceedings). They therefore told the complainant that no further action would be taken until the outcome of criminal proceedings had ended. As a result of the fact this evidence was not secured, CCTV from the custody suite was not available by the time investigative actions began. However, if a matter is sub-judice it does not follow that it is not possible for an investigation to be progressed. If there is a real risk that any particular investigative step or steps would prejudice an ongoing criminal investigation or proceedings then consideration should be given to the suspension of the investigation, in whole or in part. However, a blanket approach should not be taken.

Type of investigation

IOPC independent investigation

Findings and recommendations

Local recommendations

Finding 1

1. The force PSD did not seek the opportunity to make sure witness statements, where possible, were taken. Nor did the PSD secure any CCTV from the custody suite that may have been available during the time the criminal investigation was ongoing.

Local recommendation 1

2. The appropriate authority should make sure that officers and staff within the PSD are sufficiently trained to fully consider the impact of sub judice on their investigations, and to identify investigative steps that can be taken even during the period an investigation is sub judice.

Response to the recommendations

Local recommendations

Local recommendation 1

3. The force had a turnover of staff in their PSD department and all new staff were provided with training on investigative steps when a case is sub judice.

Outcomes for officers and staff

Sergeant I

1. Sergeant I received management action. This involved a support plan for performance and a dedicated custody inspector reviewing custody records for detainees where Sergeant I has authorised their detention.

Inspector G

2. Inspector G received management action. This involved a support plan for performance and a dedicated custody inspector reviewing custody records for detainees where Inspector G has carried out inspector's reviews.

Questions to consider

Questions for policy makers and managers

1. How does your force make sure that officers and staff are fully aware of the PACE Code C definition of mental vulnerability?

2. What training does your force provide to officers/staff on autism/ADHD?

3. What processes does your force have in place to make sure that all custody staff are able to review the custody record regularly throughout a shift, even during busy periods to make sure that the requirements of APP around detainee care are met?

Questions for police officers and police staff

4. At what point would you have made contact with a HCP or appropriate adult?