



**BIRMINGHAM LAW SOCIETY**  
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**Response to West Midlands Police and Crime  
Commissioner Call for Evidence**

**June 2021**

## **West Midlands Police and Crime Commissioner**

### **Call for evidence**

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#### **Introduction**

The following response to the call for evidence is provided by the Criminal Law Committee of Birmingham Law Society.

The Criminal Law Committee consists of members drawn from throughout Birmingham and surrounding areas. Its co-opted members include representatives of the judiciary and the Legal Aid Agency, as well as HMCTS staff, probation officers, prosecutors and others.

The Committee liaises with prisons, police and the courts about issues affecting all of our members. It also responds to consultations, and lobbies on behalf of both members and clients.

Birmingham Law Society is a membership organisation distinct from The Law Society, which represents approximately 5,500 lawyers in the Birmingham and West Midlands area. The Society's members are drawn from a broad base of practitioners from firms and chambers in the area.

#### **Funding**

In its review of funding for the West Midlands Police, we submit that the concept of "fair funding" includes the application of resources throughout the criminal justice system, in addition to the other competing requirements of modern policing. In particular we press the case for funding which fairly serves not only complainants but suspects.

There is an urgent need to improve police resources, to improve efficiency and reduce the delays which plague the process of investigation, charge and disposal of cases listed before the courts.

Our key concerns include the following observations:

- There appear to be insufficient resources applied to the prompt investigation of alleged criminal offending. This demonstrates itself in the delays arising from the point of arrest of a suspect to the point of interview. The delays involved appears to have increased significantly in recent years. It appears to have been accepted as a norm that a detainee will spend a protracted period detained in custody following arrest before a decision on disposal is reached. In recent research commissioned by West Midlands Police an average detention time approaching 17 hours was noted, including minor cases involving relatively routine enquiries.
- Investigating officers regularly complain of the paucity of material provided in a handover package when files are transferred between shifts. A sense prevails that, having detained a suspect, there is a lack of urgency and due regard for that person's liberty while the handover package is prepared and considered by new personnel.

- There appear to be too few custody officers and related staff deployed to the custody suites located in Perry Barr and Oldbury. Members report that there are increased delays in providing telephone contact for solicitors to detained people.
- Similarly, for those bailed to return during investigation, there is often difficulty in ascertaining what action is proposed when they are required to answer bail. This impacts on defence practitioners, in time lost chasing enquiries and often in abortive attendance with suspects.
- Following release under investigation, there are significant delays in the resolution of that investigation. This appears again to be resource led, and no doubt in part arises from the increase in seizure of digital devices and media. There appears to be increasing delay in officers receiving the return of reports obtained by hi-tech investigators, suggesting a lack of appropriate resources allocated to this specialist resource.
- Again, for those released under investigation, much resource is expended by defence practitioners in seeking updates from officers in the case. Suspects released under investigation are no less affected by the stress of the ongoing investigation than those released subject to bail.
- In instances where the decision is taken to prosecute, the Crown Prosecution Service frequently cite the insufficiency of file build, with the result that cases are delayed before postal requisition or charges are issued. In turn, when cases proceed at court, delays in the provision of some evidential material are commonplace. This is particularly the case with provision of digital evidence, such as CCTV footage. Delay in the service of material to the prosecution and subsequently to the defence gives rise to delay in proceedings. This impacts upon complainants, witnesses and suspects equally.
- Improvement in resourcing will enable earlier identification of relevant material and enable the police to comply with the obligation to investigate not only material tending to implicate the suspect but that which may undermine the prosecution case.
- There is clearly room for improvement in the technology provided to officers and in particular to aid communication with other agencies. By way of example, it is surprising in the current digital environment that a process has not been identified to enable the early service to the defence of custody records in a digital format.

## **Mental health**

We share the view that mental health, closely associated with issues of alcohol and drug dependency, are key issues requiring focus in the criminal justice system.

The overriding objectives identify the need for early identification and intervention to avoid unnecessary criminalisation of suspects who suffer with poor mental health. We welcome the inclusion of Liaison and Diversion services in the custody environment and at court. There is clearly a need to ensure ongoing resourcing of agencies tasked with assessment and provision of information regarding the health of suspects detained by the police at an early stage. There are still notable examples of defendants appearing before the courts who are

under disability and, in relation to whom, the public would be better served by them being diverted from the criminal justice system entirely.

The PCC's office is encouraged to identify and resource further progressive schemes to properly divert those with mental health conditions away from the criminal justice system and towards treatment. This is particularly true of youth suspects.

## **Diversion**

In recent years, West Midlands Police has championed a progressive approach in some areas of offending. In conjunction with the Probation Service, officers piloted the C3 Changes and Consequences Program with a view to improving the management of offenders in the community. The initiative sought to reduce the incidence of domestic burglary by 30% in the region by identifying key recidivists.

Rather than the circular process of substance abuse, offending and incarceration, the project aimed to remove defendants from the system. In successful cases recidivist offenders subject to minimum sentencing provisions were placed on periods of deferment, supervised by the judiciary, with a view to putting in place stringent programs to monitor their rehabilitation. There have been encouraging signs that the program can successfully remove defendants from the social, geographical and other factors that trigger offending, thereby reducing the incidence of offending and the risk to the public.

The PCC's office is encouraged to engage with the officers of West Midlands Police involved in this program and support them to find more progressive solutions to reducing offending. The program is deserving of improved funding and an established pilot scheme in the area.

Similarly, there is a need for a more progressive approach to the diversion of children and young people away from the criminal justice system. There remains a significant issue with the detention of young people in custody suites overnight, and the failure on the part of the local authority to provide suitable accommodation where appropriate.

## **Care Leaver Covenant**

Birmingham Law Society and firms in the region have engaged with Spectra Connect in its delivery of the Care Leaver Covenant (CLC). There is concern as to the disproportionate over-representation of care experienced people in the criminal justice system, and the same demographic's under-representation in higher education.

The CLC has engaged positively with West Midlands Police, the Crown Prosecution Service and other agencies with a view to improving identification of care experienced young people entering the criminal justice system (with emphasis on those aged 18 to 25). There is recognition that on leaving care there is a void in the provision for care experienced people who are consequently vulnerable to crime both as victims and offenders. This leads to a disproportionate representation of that demographic in the region's prisons.

There is a need for improved research into the provision for care experienced people and regarding their journey following arrest. CLC has engaged with West Midlands Police to pilot measures to improve identification, awareness and empathy for those with care experience. Work is underway to involve local universities in a project to provide empirical data to identify practical solutions to assist the care experienced and to seek to improve outcomes for this group.

It is hoped that the PCC's office will take part in, provide data for, and partner with the agencies involved in this research.

### **Equality, Diversity and Inclusion**

We are heartened to note that the PCC's office identifies issues of equality, diversity and inclusion to be key to improving service in the region. We trust that there will be a demonstration of commitment to a proper review of the impact of policies to ensure that they are free of discrimination.

Internally there is clearly a need for West Midlands Police to better mirror the community it serves. Although there have been improvements in recent years, there remains a need for commitment to improving the number of officers drawn from diverse backgrounds reflecting all protected characteristics.

Externally there is an even greater need for sensitive policing which reflects the protected characteristics of the community:

- Review of the ongoing disproportionality of the impact of the use of stop and search powers in some minority communities;
- Similarly with regard to vehicle stop and search;
- Reducing stereotyped and discriminatory assumptions based on protected characteristics and arising from the density of some communities in differing areas of the County;
- Improving training in the resolution of conflict and the avoidance of unnecessary escalation of incidents.

### **Multi agency communication**

Birmingham Law Society welcomes the indication that the PCC's office will focus on communication with all agencies directly involved with policing in the West Midlands. In relation to the criminal justice system we urge that meetings are genuinely multi-agency and that efforts continue to include representatives from the defence community, both from firms of solicitors and also the Bar.

We have seen over the last year West Midlands Police take responsibility for chairing a weekly stakeholder meeting to address developments and concerns arising as a result of the pandemic. Birmingham Law Society was invited to attend the meeting and regularly contributed on behalf of members. It has been an invaluable forum for discussion and effective policy development in a time of crisis. Those involved should be commended. Lessons can be learned for other similar forums in the future.

Our experience has been that on occasion multi-agency participation has been stymied when West Midlands Police have been unable to provide a representative who can attend regularly and thereby provide a consistent contribution. Similarly, it is apparent that progress cannot be made unless those deployed to meetings are of sufficiently high rank to participate as key decision makers in the organisation.

We submit that there is also a need to rejuvenate the Integrated Advisory Group, which invited multi-agency partners involved in the custody environment. Much can be achieved by review of the challenges facing all parties in that sphere.

We also encourage the PCC's office to review the provision of voluntary custody visiting and inspection. There appears to have been a falling off of provision of independent assessment of custody facilities by lay visitors. We encourage the PCC's office to engage with the appropriate organisations to improve the effectiveness of representations made by bodies such as the Independent Custody Visitors Association.