



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Angelique Howell
Chief Inspector, Royal Cayman Islands Police Service
P.O. Box 909
Grand Cayman KY1-1106
CAYMAN ISLANDS

3 January, 2013

Via Email: angelique.howell@gov.ky

Dear Chief Inspector Howell,

The Human Rights Commission (“the Commission”) would like to take this opportunity to thank you for your e-mail of 19 November, 2012 in which you invited the Commission to review the Royal Cayman Islands Police Services’ (RCIPS):

1. Custody of Prisoner Policy; and
2. Code C - Detention, Treatment and Questioning of Persons by Police Officers

Introduction

As people become more conscious of the rights that they are entitled to under the Bill of Rights, Freedoms and Responsibilities, they are more likely to complain about their treatment whilst in the custody of law enforcement authorities, including conditions of their detention, treatment, and questioning by police investigators. The challenge for the Police Service is to learn from complaints and incidents to ensure they maintain best practices, human rights compliant policies, and to continue to deliver services that fulfil the community’s expectation. These expectations will not remain static; rather, they will be constantly evolving.

As noted in prior correspondence to the RCIPS, the comments set out below are not a substitute for legal advice; nor do comments by the Commission constitute guidelines for the development of policy by the Royal Cayman Islands Police Service.

CUSTODY OF PRISONER POLICY

2.12.2. All staff have a duty of care and must do all that is reasonably possible to protect the right to life under Article 2 of the European Convention on Human Rights. The decision to withhold articles from the prisoner must be based on the Risk Assessment of each individual and should be recorded.

Comment: Subsequent to the implementation of the Bill of Rights, which came into effect on 6 November, 2012, all police staff has a duty of care to protect the right to life under Part 1 of the Constitution, Section 2; as such this should be referenced in your document.

2.18.2. Any delay of these rights must also be recorded on the prisoner's custody record with reasons outlining the delay along with the relevant authorising authority.

Comment: Delays in allowing prisoners to exercise their human rights as afforded under Part 1 of the Constitution Order 2009 should be strictly in accordance with the provisions granted to public authorities as outlined within sections of the relevant qualified and/or restricted rights.

2.26.4. Inappropriate questions about a transgender person's physical body, gender history or transition (gender reassignment) process will insult the person and may impact negatively on their willingness to co-operate. Only questions that are essential for the investigation of a crime

Comment: The paragraph appears to be incomplete.

4.2.6. If the custody officer has any doubt about the prisoners fitness to be detained or interviewed following their return from hospital

Comment: The paragraph appears to be incomplete.

5.3.2. Detaining a Young Person/Juvenile in a Police cell is an acceptable option, providing the decision can be accounted for and is proportionate to the circumstances.

Comment: Consideration should be given to multiple variables when deciding whether or not to exercise this option, including the status of young persons' vulnerabilities in a general sense; separation from adult detainees; access to appropriate adults; and other factors that impact a young person's dignity, safety, psychological well-being, and other protections afforded by the Bill of Rights.

10.1. General Management Considerations

Comment: The physical conditions of the cells and cell complex should provide for the humane and dignified treatment of detainees. In this regard, detainees should be provided with an adequate standard of accommodation that ensures their safety and welfare, and balances individual rights with the rights of others.

10.2. Cleaning Policy

Comment: Detainees should be held in a clean environment that enables them to comply with basic hygiene needs in a dignified and decent manner, maintain a good appearance compatible with their self-respect, and provides for their physical and mental health and well-being. Detainees may be required to maintain their cells in the interest of hygiene or maintenance of the area in which they are being kept.

RULE C: DETENTION, TREATMENT AND QUESTIONING OF PERSONS BY POLICE OFFICERS

8.6 At least two light meals and one main meal should be offered in any 24 hour period.

Comments: Adequate food should be offered to detainees and the calorific value of meals should be reasonable and sufficient to meet the dietary requirements of detainees, including those held for over twenty-four hours.

10.12 If a juvenile or a person who is mentally disordered or otherwise mentally vulnerable is cautioned in the absence of the appropriate adult, the caution must be repeated in the adult's presence.

Comment: When reasonably practicable, consideration should be given to only caution a juvenile or 'mentally disordered' individual in the presence of an appropriate adult; the individual's mental capacity to understand the meaning of the caution, his/her rights, and implications of his/her speech after the caution may, under certain conditions, have implications with regard to BOR Section 19 as it relates to proportionality, rationality, and procedural fairness.

10G Nothing in this Rule requires a caution to be given or repeated when informing a person not under arrest they may be prosecuted for an offence. However, a court will not be able to draw any inferences under the Police Law 2010 Revision Section 150 and 150 if the person was not cautioned.

Comment: Typographical error regarding "Section 150 and 150".

11.1A An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution. Whenever a person is interviewed they must be informed of the nature of the offence, or further offence. Procedures under the Road Traffic Act 1988, section 7 or the Transport and Works Act 1992, section 31 do not constitute interviewing for the purpose of this Code.

Comment: This section references U.K. legislation; it is necessary to revise with the relevant Cayman Islands legislation.

11.6 This paragraph does not prevent officers in revenue cases or acting under the confiscation provisions of the Criminal Justice Act 1988 or the Drug Trafficking Act 1994 from inviting suspects to complete a formal question and answer record after the interview is concluded.

Comment: This section references U.K. legislation; it is necessary to revise with the relevant Cayman Islands legislation.

11.11 Unless it is impracticable, the person interviewed shall be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it inaccurate. If the person interviewed cannot read or refuses to read the record or sign it, the senior interviewer present shall read it to them and ask whether they would like to sign it as correct or make their mark or to indicate how they consider it inaccurate. The interviewer shall certify on the interview record itself what has occurred.

Comment: The RCIPS may wish to seek legal advice as to the consideration of making available the opportunity for interviewees to have an appropriate adult present for the purposes of being read-back the interview transcript in instances wherein the interviewee cannot read, hence verify, that which is being read to him/her. Such instances may give rise to a challenge under the “procedurally fair” clause of BOR Section 19.

11B The Criminal Procedure and Investigations Act 1996 Code of Practice, paragraph 3.4 states ‘In conducting an investigation, the investigator should pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. What is reasonable will depend on the particular circumstances.’ Interviewers should keep this in mind when deciding what questions to ask in an interview.

Comment: This section references U.K. legislation; it is necessary to revise with the relevant Cayman Islands legislation.

12A It is not normally necessary to ask for a written statement if the interview was recorded in writing and the record signed in accordance with paragraph 11.11 or audibly or visually recorded in accordance with Code E or F. Statements under caution should normally be taken in these circumstances only at the person’s express wish. A person may however be asked if they want to make such a statement.

16.9 Any questions put in an interview after charge and answers given relating to the offence shall be recorded in full during the interview on forms for that purpose and the record signed by the detainee or, if they refuse, by the interviewer and any third parties present. If the questions are audibly recorded or visually recorded the arrangements in Code E or F apply.

Comment: Previous reviews of RCIPS directives referred to the Visual Recorded Interviews Policy as Code C, and the Audio Recorded Interviews Policy as Code B. This section appears to reference U.K. police interview policy issued as Code E and Code F in accordance with PACE. It is necessary to revise with the relevant RCIPS titles of the relevant policies.

16A The custody officer must take into account alternatives to prosecution under the Youth Justice Law and Police Law, reprimands and warning applicable to persons under 17 in accordance with these laws.

Comment: Attention is brought to that fact that under the Bill of Rights, “child” is defined as a person under the age of 18; accordingly revisions to the Youth Justice Law are expected to be amended for consistency with the Constitution.

Annex B- Delay in Notifying Arrest or Allowance Access to Legal Advice

Comment: This section references U.K. legislation; it is necessary to revise with the relevant Cayman Islands legislation.

Annex E- Summary of Provisions Relating to Mentally Disordered and otherwise Mentally Vulnerable People

Comment: Every person is equal before the law and has legal protection to enjoy his or her human rights without discrimination. Particular care should be taken to protect the rights of all mentally vulnerable individuals coming in contact with police officers.

Conclusion

Based on our review of the revised Custody of Prisoners Policy, the Commission has found areas of concern to which we have provided comment. With regard to Code C - Detention, Treatment and Questioning of Persons by Police Officers, the Commission found that it is still in an initial draft stage. Because this draft Policy has clearly been based on the equivalent UK Policy a number of references to UK laws incorrectly remain. Care should be taken to ensure that references to UK legislation are deleted and substituted with reference to the appropriate Cayman Islands laws and/or regulations and policies.

The Commission would advise the RCIPS to undertake further development of these policies. Moreover, we remind the RCIPS that our review should not be considered exhaustive, and we would further encourage the RCIPS to consult with the Cayman Islands Legal Department in an effort to ensure compliance with all local and international legislation.

The Commission hopes that this feedback assists the Royal Cayman Islands Police Service in its aim to ensure that these policy directives are drafted and implemented in accordance with Part One of the Cayman Islands Constitution Order (2009) – The Bill of Rights, Freedoms, and Responsibilities.

Kind regards,



PP Richard Coles
Chairman, Human Rights Commission

1st Floor Cayman Corporate Centre, George Town, Grand Cayman
P.O. Box 391 | Grand Cayman KY1-1106 | CAYMAN ISLANDS
Telephone: 1.345.244.3685 Facsimile: 1.345.945.8649
Website: www.humanrightscommission.ky