

WEST MERCIA POLICE AND CRIME PANEL 27 JULY 2023

MOST APPROPRIATE AGENCY (MAA)

Recommendation

1. Members of the Panel are invited to consider the report.

Background

2. On the 3 April 2023, West Mercia Police introduced a new policy and procedure referred to as 'Most Appropriate Agency' (MAA). The Policy is based on Humberside Police's Right Care Right Person (RCRP) policy and procedure.
3. Humberside Police identified that before the introduction of RCRP an average of 1,566 incidents per month were being reported to the Police relating to issues such as concerns for welfare, mental health incidents or missing persons.
4. Humberside Police were concerned that by attending these incidents, they were not providing the most suitable intervention to vulnerable members of the public who required specialist support. This was putting both the public and their officers at more risk. It also meant that the public were not receiving the most effective response to incidents from public services.
5. Humberside Police made the conscious decision to refocus on core policing duties, as set out by Sir Robert Peel. These still form the basis of policing in the UK today. The core duties under common law are:
 - a) preventing and detecting crime
 - b) keeping the King's peace
 - c) protecting life and property
6. Following this decision, Humberside Police sought advice to understand where duty of care responsibilities lie and where other agencies would be more appropriate to attend calls for service. This advice was used as a basis to support the development of the RCRP initiative.
7. RCRP is a programme of work that has been carried out over a three-year period involving partners in ambulance, mental health, acute hospitals and social services. The premise of the initiative is that these partnerships ensure RCRP can achieve its aim to provide the best care to the public by ensuring the most appropriate response to calls for service.

8. RCRP and MAA is intended to ensure that everyone, including the most vulnerable members of our community, receive the correct service, by the most 'Appropriate Agency' – first time and every time.
9. The Policy is underpinned by case law and legislation that specifically defines the parameters of the Police role & purpose; and provides the legality, jurisdiction & legitimacy in which the Police should be operating.
10. Whilst the Policy is underpinned by relevant legal precedent and statutory guidance relating to Police powers, discretion will always exist for operational commanders. If, or where, West Mercia Police choose to attend an incident where there is no statutory policing role, consideration would need to be given as to whether some potential actions from attending officers would be within the lawful execution of their duty. It therefore follows that the decision to attend must be clearly recorded, with the rationale and a clear tactical plan as to what is expected of the attending officers. This is a consideration for the Force around implementation of the new policy.
11. Policing powers are not always appropriate to resolve many of the situations that officers are requested to attend by the public. In many cases, a legal precedent has already ruled that the Police service is not the most appropriate agency to act.
12. The majority of calls for service that will fall within the new Policy are those that relate to "Medical, Health & Social Care." The Police service rarely have the qualifications, training, or experience to respond to these calls as effectively as trained medical professionals, and rarely have the legal basis, jurisdiction or legitimacy to act.
 - a) The type of calls that this procedure is intended to address generally fall under the following headings.
 - b) Medical/Health related calls for service
 - c) Safe & Well or Welfare checks
 - d) AWOL mental health patients
 - e) Patients with full capacity who leave health facilities (A&E, GP etc) unexpectedly
 - f) Police support to voluntary mental health cases
 - g) Requested use of Police attendance for security at premises occupied by or attended by partner agencies
 - h) Requested use of Police for transportation of patients in the care of other agencies
 - i) Police use of emergency powers to mitigate incidents being managed by other agencies which have escalated
13. The Force policy sets out that all calls for service will be assessed and only those where there is an identified statutory policing role or where the call handler has confirmed that it is the most appropriate agency, will an incident be created. In all other situations the call will be closed as a contact record.

Assessment Model

14. West Mercia Police will continue to utilise the THRIVE assessment model for those calls for service where an incident has been generated; on the basis that the creation of an incident will denote that a Police response has been agreed.
15. The THRIVE assessment tool will allow for the appropriate decision making in relation to the grading and allocation of these calls for service; as below.

T: Threat

What is the overall threat posed by the report, not only to the victim, but to the immediate family, children, community and location?

H: Harm

What is the impact of the threat? Consider not just the victim or witnesses, but also the community impact.

R: Risk

What risks are obvious or yet to be determined?

What resources and specialist assets are needed to safeguard the victim or community?

I: Investigation

What is the legality, necessity, proportionality in relation to the offence being reported?

V: Vulnerability

What are individual or community vulnerabilities?

Identify how police and partners best safeguard against harm.

E: Engagement

What is the safest means of engagement for the victim and what is the most effective means?

16. During the THRIVE assessment, there is an assessment as to whether there is an immediate risk to life or serious harm to an identified person and determine who is the most appropriate agency to mitigate that risk.
17. Even where a response from the most appropriate agency would be delayed, the Force's position is that it is always preferable that a qualified person from the most appropriate statutory agency, in possession of all the relevant facts, should attend to the person in need. The only exception would be that where there is an immediate, unconditional and real threat to life.
18. This procedure allows West Mercia Police to be clear on its policing purpose and service delivery prior to deploying available resources.

Implementation of the Policy

19. In June 2022 Chief Officers were consulted on adopting RCRP, or MAA as a policy. The Policy was approved in principle and the Force began working on implementation, to include stakeholder engagement.

20. In August 2022, ACC Rachel Jones outlined the proposed policy to the West Mercia Vulnerability Partnership Executive Group (VPEG). VPEG brings together partners from across West Mercia involved in safeguarding and public protection. Members of VPEG were provided with a presentation outlining the policy and given an opportunity to ask questions. Several partners indicated that they would need to go back and consider the implications of the policy.
21. The Force began to formally consult with partners after the August VPEG meeting. West Mercia Police engaged with over 60 organisations holding a series of workshops and engagement events in addition to inviting stakeholders to take part in a formal consultation exercise.
22. As part of the consultation exercise the Force sought direct feedback from over 60 partners via a survey questionnaire. Executive leads and senior members of organisations were asked to cascade the survey and communication to their workforce. The Force anticipated in the region of 600 responses, (representing approximately 10 responses per agency) but received just 19 (approx. 2% of the expected returns). Most of the responses received indicated that the change in policy wouldn't have an impact on their organisation / service.
23. On the 9 November 2022, ACC Jones wrote to members of VPEG thanking members for their contribution and outlining that the Force would be moving towards implementing the policy. In addition, ACC Jones set out how the policy would be monitored, and management information would be brought back to VPEG for review.
24. While West Mercia Police were in the process of implementing MAA, the Home Office, College of Policing (CoP) and the National Police Chief's Council (NPCC) were in the process of reviewing RCRP as a policy.
25. In February 2023, the Home Secretary (HS) wrote to each Police Chief and Police and Crime Commissioner outlining the work carried out by Humberside Police. In the letter the HS outlined how the CoP and the NPCC were working on developing a toolkit along with a range of products to assist Forces in implementing RCRP within their Force.
26. The toolkit is due to be released in July 2023 with the CoP recommending that Forces begin to implement the toolkit and Policy between July and December 2023. Part of the work being carried out by the CoP and NPCC includes a National Partnership Agreement between governing bodies, such as the Department of Health and Social Care, the NHS and Home Office.
27. In addition to the toolkit products being developed a national team and funded by the National Police Chiefs' Council (NPCC), will also be available to support forces to implement the toolkit between July and December 2023.
28. West Mercia has adopted the policy before the availability of the national toolkit and associated products. The impact of this and whether it would have presented any further opportunities to aid consultation, development and implementation is unknown.

Implications of the Policy

29. The MAA policy seeks to define a consistent relationship between the Force and all other public authorities, statutory partner agencies and those commissioned to provide services on their behalf. Similarly, it seeks to present greater transparency for members of our community who are often confused as to the roles they can expect from health and social care providers and from the Police service.
30. The Force is routinely contacted by partner agencies and members of our community to carry out a “welfare check” on a person whom they have concerns for, in the belief that Police are the most appropriate agency and are responsible or liable for the welfare of identified individuals deemed to be vulnerable or at risk.
31. Where WMP receive a call from any agency to conduct a welfare check AND the Force do not agree that there is a statutory policing role contained within the circumstances presented, the Force’s policy moving forward will be to “firmly decline the request.”
32. Any agency seeking the support of another, should not have a predetermined task for them or an assumption that they can transfer a duty of care; instead, these organisations should convene a “strategy meeting” so that all relevant partners can come together, facts can be shared and an informed decision made – with the details recorded as to whether a single agency or joint agency response is agreed upon. A strategy meeting can be convened at short notice and outside of normal office hours.
33. Consequently, partner agencies should therefore only have a need to call the OCC where there is an unforeseen, immediate, unconditional, and real threat to life; or where they are reporting an ongoing or imminent breach of the peace; or when reporting that a criminal offence has occurred, and they are requesting us to investigate it.
34. By adopting this approach, the Force believes that the most vulnerable members of our community can be assured of a consistent approach and that decisions relating to their care are based on the most up to date facts by qualified and experienced staff and they are attended to by the most appropriate agency.
35. Where a Police response is agreed within a strategy meeting, it should be clearly defined as to the parameters that exist for the deployment, as it should for the role of all other attending agencies.
36. Where public authorities, statutory partner agencies and those commissioned to provide services on their behalf conclude that there is a legitimate reason to request the support from the police service, West Mercia Police have introduced a specific Partnership Portal within Single Online Home (the website service used by most Police forces in England & Wales), allowing submissions of request to the Police electronically, 24hrs a day. The same process of Triage, THRIVE assessment and decision will be undertaken upon receipt of requests using this portal. This will not be seen as an alternative for convening a formal

strategy meeting and the requesting partnership will be engaged where this is the appropriate means of considering the case.

Legal and ethical considerations

37. The Police do not generally owe a duty of care under common law to protect individuals from harm – either harm caused by themselves or others. Where the Police omit to act, it is unlikely that they will be held to have breached a duty of care. The Police may owe a duty of care to protect persons from harm where the Police have assumed responsibility to care for them, or where the Police have created (directly or indirectly) the risk of harm.
38. Police can owe duties under the Human Rights Act 1988 to protect individuals from harm caused by others or harm caused by the person themselves. The Police owe responsibility to take all reasonable measures to assist where there is either:
 - a. a real and immediate risk to the life of a person (European Convention on Human Rights (ECHR) Article 2)
 - b. a real and immediate risk of that person being subject to serious harm or other inhumane treatment (ECHR Article 3)
39. The risks of harm where a duty will arise on the Police will generally, but not always, be from the criminal acts of a third party.
40. The general view is that any threat would have to comprise all the following before a duty to act would arise.
 - a) For a duty to arise under Article 2 the threat must be of death. A threat of injury, even serious, is not enough to create a risk of death.
 - b) Threats or risks that do not qualify under Article 2 may still qualify under Article 3. A duty may arise under Article 3 where there is a threat of serious injury, inhumane or degrading treatment. For example, a serious sexual assault would qualify as conduct breaching Article 3.
 - c) For both Articles 2 and 3 the threat or risk must be real and immediate. That means the threat must be present and continuing. Threats are not defined as real and immediate if they are conditional on other events happening or are said to occur at some point in the non-immediate future.
 - d) The threat has to be against a specific and identifiable person or group of persons. Generalised threats do not give rise to a duty.
41. In addition, central to the new policy is the assurance that all procedures and practice:
 - a) give clear guidance to officers and staff who use them
 - b) are reasonably comprehensive
 - c) are consistent with legal obligations
 - d) promote the best interests of the force and the public it serves
42. Extensive advice was given to Humberside Police on how RCRP fits with existing legal requirements on the Police – including the duty of care on Police in various circumstances and how this might vary with vulnerable callers (including children and young people).

43. Consideration was also given as to whether to conduct Police system checks on calls where Police did not have an obvious duty to respond. This considered existing force operating models, Independent Office for Police Conduct (IOPC) investigations and law. The decision was made not to conduct intelligence checks where the decision was clearly a 'no', but to do so when the decision was 'yes' or 'maybe'.

Oversight and Governance

44. Humberside Police is clear that several factors supported the successful implementation of RCRP. These included the following:
- a) Governance structure – the development of tight governance, providing staff with clear guidance regarding parameters, information sharing and briefing expectations with statutory partners. Humberside Police also embedded legal advice in every step of RCRP initiative. This supported buy-in when staff were anxious about not meeting their duty of care.
 - b) Senior officer buy-in – having a chief officer lead who believed in RCRP and was prepared to drive it. Chief officer conversations are pivotal for gaining buy-in from other agencies and forming good partner relationships
 - c) Partnership working – RCRP benefits from close and effective partnerships with other agencies. Well-defined boundaries were created via MOUs, which also ensure all parties are updated about any intelligence that will be useful to them.
 - d) Systems – Humberside Police and partner agencies already benefit from the use of standardised risk and need rating tools that are now employed alongside RCRP.
45. Within West Mercia, governance is provided by a monthly scrutiny panel, chaired by the Head of Public Contact, which will report into the monthly Local Policing and Operations Board and Quarterly Performance Review meetings chaired by the ACC for Local Policing and Operations. Quarterly reporting will be provided to relevant partners, allowing insight and joint consideration of any necessary action needed to adjust policy or procedure.
46. In addition to existing governance arrangements, the PCC will monitor the implementation of MAA using his statutory audit and assurance framework to hold the Chief Constable to account.
47. The PCC reviewed the implementation of MAA at his accountability and assurance meeting with the Chief Constable on the 29 June 2023.

Risk Management Implications

48. The Police service currently performs functions which can exceed its statutory requirements. There are times when this is appropriate, but these instances should be consciously authorised and lawful.
49. The existing inappropriate demand is more likely to create greater vulnerability in some instances, as well as leave the organisation with blurred lines of accountability or legitimacy.

50. There is a reputational risk associated should other agencies seek to challenge the Police's decision to cease undertaking their tasks.
51. There is an indirect risk that other agencies will continue to be inaccessible and that vulnerable members of our community who are unable to access the most appropriate agency will continue to be advised to call the Police as an alternative or last resort.
52. A robust partnership approach with clear communication will mitigate many of these issues, as witnessed by the multiple forces who have adopted this strategy.

Financial Implications

53. None.

Legal Implications

54. See above.

Equality Implications

55. West Mercia Police are currently reviewing the Equalities Impact Assessment (EIA). The EIA should be completed by 1 June 23.
56. The Humberside RCRP policy treats children as vulnerable. This vulnerability should form part of the assessment of any real and immediate risk under Articles 2 and 3 of the ECHR.
57. The policy may also adopt a different threshold of 'significant harm' (such as that enshrined in the Children Act 2004 s31(9)) that is arguably lower than that in Articles 2 and 3.
58. When children are involved, there is also an obligation to consider the best interests of the child. (This could involve making referrals to other agencies such as social services, even when there is deemed to be no immediate risk and thus no duty of care on the Police.)

Supporting Information

None

Contact Points for the Report

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Background Papers

In the opinion of the proper officer (in this case the Assistant Director for Legal and Governance (Monitoring Officer) there are no background papers relating to the subject matter of this report.

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